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EXTRAORDINARY

PART II—Section 3

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No. 129] NEW DELHI, THURSDAY, JUNE 10, 1954

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 20th May 1954

S.R.O. 1863.—Whereas the election of Shri Surendra Lal Jha, son of Ballabhaji Jha resident of Ojha Ward, District and Tahsil Mandla, as a member of the Legislative Assembly of the State of Madhya Pradesh, from the Nainpur-Mohgaon constituency of that Assembly has been called in question by an Election Petition (Election Petition No. 3 of 1953 before the Election Commission) duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Amirchand, son of Phadalilal Jain resident of Ojha Ward, District and Tahsil Mandla;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, NAGPUR

PRESENT:—

1. Shri N. H. Majumdar, B.Sc., LL.B.,—*Chairman.*
2. Shri S. C. Rai, B.A., LL.B.,—*Member.*
3. Shri Abdul Razak, Advocate,—*Member.*

ELECTION PETITION NO. 1 OF 1953

1. Shri Amirchand, son of Phadalilal Jain, age 33 years, resident of Ojha Ward, Mandla, tahsil and district Mandla, Madhya Pradesh—*Petitioner.*

Versus

1. Shri Surendra Lal Jha, son of Pandit Ballabhaji Jha, aged about 40 years, resident of Ojha Ward, Mandla, tahsil and district Mandla, Madhya Pradesh;
2. Shri Dwarka Prasad Mishra, son of Pandit Ayodhya Prasad Mishra, age 50 years, resident of Dharampeth Extension, Nagpur, Madhya Pradesh;

3. Shri Chetram Choudhari, son of Ghanshyam Prasad Choudhari, age about 45 years, resident of Maharajpur, Mandla, tahsil and district Mandla, Madhya Pradesh;
 4. Shri Devandralal, son of Mahendralal Choudhari, age about 25 years, resident of Maharajpur, Mandla, tahsil and district Mandla, Madhya Pradesh;
 5. Shri Shyamlal Wikey, son of Indu Wikey, age about 40 years, resident of village Sarra, tahsil and district Mandla, Madhya Pradesh;
 6. Shri Gaya Prasad, son of Dharamlal Yadava, age about 34 years, resident of Amla Ward, Mandla, tahsil and district Mandla, Madhya Pradesh—Respondents.
1. Shri B. R. Mandlekar, Advocate for the petitioner.
 2. Shri R. M. Hajarnavis, and Shri U. D. Pathak for the respondent No. 1.
 3. Shri S. P. Pathak for the respondent No. 3.

JUDGMENT

(Delivered this 26th day of April, 1954.)

This is an election petition presented under section 81 of the Representatives of the People Act (No. XLIII of 1951), challenging the election of respondent 1 from Nainpur-Mohagaon Constituency at the bye-election held in December 1952 on the death of the sitting member the late Shri Mahendralal Chaudhari. At the election the respondent 1 got 25,308 votes while his rival respondent 2 got 6,440 votes. Respondents 3, 4, 5 and 6 were duly nominated candidates but they withdrew their candidature within the time allowed by law. Respondent 4 is the son of the late sitting member Shri Mahendra Chaudhari while respondent 3 is his nephew.

2. The election has been challenged on the ground of corrupt and illegal practices, the particulars of which it is unnecessary to state as they are quite apparent from the issues framed. The respondent 1 alone contested the election. Other respondents did not care to appear or file their written statements, though respondent 3 was represented by his counsel at the trial and cross-examined the petitioner's witnesses and also examined himself as a witness. Respondent 4 submitted his nomination paper to enable him to contest the election should by any chance Chaitram's nomination be not accepted. Gaya Prasad Yadava also was to contest the election if by any chance the nomination of respondent 1 was rejected. The late Shri Girjashankar Agnihotri had also been duly nominated on the submission of the nomination form but he withdrew as the nomination of respondent 2 was accepted, they both being the candidates belonging to the Praja Socialist Party. Shri Shyam Lal Wikey was an independent candidate and belonged to no party.

3. The nomination papers were submitted on 14th November 1952 and accepted on 17th November 1952, but all except respondents 1 and 2 withdrew within the time allowed by law. 28th December 1952 was the polling day and the result was declared on 31st December 1952.

4. The petitioner is an elector, and besides the prayer of the setting aside of the election of the respondent 1 the petitioner has also asked for a declaration that respondent 2 Shri Dwarka Prasad Mishra is a duly elected candidate.

5. In his petition, at the end of paragraph 5 the petitioner alleged that the election was not free and fair as "the corrupt practices of bribery and undue influence extensively prevailed". This pleading implied that the petitioner invoked the aid of section 100(1)(a) of the Representation of the People Act. But his learned counsel at the stage of argument vehemently urged that section 100(1)(a) was not applicable to this case but that the case fell under section 100(2)(b) since the relief of declaration, that the respondent 2 was a duly elected candidate, probably appeared to him inconsistent with the pleading at the end of paragraph 5 of the petition (*viz.* that the election was not free and fair as the corrupt practices of bribery and undue influence extensively prevailed during the election).

6. I have noted below the issues and the findings thereon:—

	Issues	Findings
I (a)	Did the Congress President by a circular authorise the leader of the Congress Party in Madhya Pradesh Legislative Assembly to select a candidate for the bye-election ?	No.
(b)	Was the Chief Minister of Madhya Pradesh given a predominant voice in the selection of the candidate ?	Yes.
(c)	Did he select the first respondent as candidate for the election ?	No.
(d)	Did the Congress party of the Madhya Pradesh Government obliterate the difference between party and Government ?	No.
(e)	Was the election not free and fair by reason of its being fought on behalf of the first respondent by the Ministers of Madhya Pradesh Government ?	It cannot be said that was not free and fair.
(f)	Did the practices of bribery and undue influence prevail extensively ?	No.
II.	Were the respondents 3 and 4 induced to withdraw their candidature by a promise made by the Minister of Industries and the Chief Minister to get them elected to the Council of States ?	No.
III.	Did the Minister of Industries bring pressure upon influential electors and those who had dealings with Madhya Pradesh Government to vote for the first respondent ?	No.
IV	Did the Minister of Industries in order to induce electors to vote for the first respondent, assure immediate relief to unwilling voters, and order the Deputy Commissioner Mandla to reduce the rate of bamboos from Rs. 5 to Rs. 1-8-0 per hundred ?	No.
V.	Did the Minister of Industries press the Mine owners in the State to send their conveyances to be used for promoting the election of the first respondent ?	Yes.
VI (a)	Were the meetings addressed by the Chief Minister for election, arranged by the Patels, Patwaris, Kotwars and other Government servants, and were leaflets regarding Chari and Nistar handed over for immediate distribution to the Deputy Commissioner Mandla ?	No.
(b)	Did the Chief Minister arrange for men, money and conveyances including the jeep car of Sagar University for promoting the election ?	Vide paragraph 51.
VII (a)	Did the Finance Minister say that if the electors wanted to have their grievances redressed they should vote for the first respondent and that if they voted for the second respondent their grievances would not be redressed ?	No.
(b)	Did he in a meeting at Nainpur say that votes should be cast in the box, with bullock symbol as rulers came out of the box, and that if votes were given to the Congress Party candidate grievances would be redressed and that otherwise they would go unheard ?	He said that votes should be cast in the box with bullock symbol as rulers came out of the box but did not say that otherwise their grievances would go unheard.

	Issues	Findings
VIII.	Did the Health Minister promise a hospital at Mainpur to induce the electors to vote for the first respondent ?	No.
IX.	Did the Agriculture Minister promise relief of Takavi and water supply to induce electors to vote for the first respondent ?	No
X.	Did the Chief Minister and Minister of Industries permit export of maize to win over traders of Mandla for the support of the candidature of the first respondent ?	No.
XI.	Did the Chief Minister, and Ministers for Industries, Finance, Agriculture, Food and Health use rest houses, Government cars and services of Government servants to influence voters for promoting the election of the first respondent ?	Some Ministers have used rest houses but not Government cars, and the services of Government servants. Nothing was done to influence voters.
XII.	Did Patels, Patwaris, Kotwars, Police Officers and other Government servants lead voters to the polling booths ?	No
XIII.	Did the Prime Minister press the Chief Minister to do all that he could to bring about the defeat of the second respondent ? Was the action improper ?	No
XIV.	Did the personnel of the Central Criminal Intelligence Department and that of the Madhya Pradesh influence the voters and watch the supporters of the second respondent ?	No
XV (a)	Did the agents and messengers of the first respondent distribute liquor to the electors of Scheduled tribes ?	No
(b)	Were the services of a Government servant requisitioned to persuade a liquor contractor to supply liquor ?	No
(c)	Did the agents and messengers of the first respondent distribute caps, clothes and money to electors ?	No
XVI (a).	Was Mangru Wikey deputed by the Prime Minister to induce respondents 3 and 4 to withdraw in favour of the first respondent ?	No.
(b)	Did Wikey assure the Scheduled caste electors that Gond Raj would be established if Congress nominee were elected ?	Yes But it did not amount to corrupt practice.
(c)	Did Wikey, in the name of Bada Deo, ask Scheduled Caste voters to vote for the first respondent, and tell them that facilities granted by Government would be withdrawn if votes were not given to him ?	He asked them to vote for the first respondent in the name of Bada Deo. Laterpart of the issue is not proved.
(d)	Did Wikey say that a Gond not voting for the first respondent would not be a true Gond, would be excommunicated, and would incur wrath of Bada Deo ?	No
(e)	Did a lieutenant of Mangru Wikey threaten the second respondent that his brain would be blown out ?	See paragraph 79.
(f)	Did Wikey in a public meeting falsely say that the second respondent had imposed a school tax ?	No.

	Issues	Findings
XVII.	Did the agents and wokers of the first respondent threaten and assault the supporters of the 2nd respondent ?	No.
XVIII.	Did Seth Govinddas in a public meeting at Chirai Dongri say that the second respondent patted officers on their backs and was responsible for inefficiency and corruption ?	No.
XIX.	Did Shri Rameshwar Agnibhoj in a meeting at Nainpur say that the second respondent had squandered crores of rupees over Nepa Mills ?	No.
XX.	Did the publishing agency of the first respondent distribute a leaflet in which it was stated that the second respondent falsely had shown those persons as his supporters who in fact were not his supporters ?	See paragraph. 63.
XXI.	Did the agents and supporters of the first respondent appeal to the electors to secure the defeat of the second respondent whose victory would mean loss of honour to Shri Jawahirlal the Mulka-ka-badshah ?	No.
XXII.	Did the agents and supporters of the first respondent tell the electors that a record of the supporters of the second respondent was being kept for action against them after the election ?	No.
XXIII.	Did the agents of the first respondent procure conveyances for taking voters to the polling booths ?	No.
XXIV (a)	Did Mahant Laxminarayan at Chirai Dongri declare that the second respondent having incurred displeasure of God, those who would vote for him would invite divine displeasure ?	No.
(b)	Was it also declared by a member of the party of the Mahant that second respondent being Ravana and Shri Jawahirlal being Ram, the second respondent should be defeated ?	No.
XXV (a)	Did the supporters of the first respondent in an election meeting at Nainpur sing National anthem, and a song relating to cow ?	Yes. But did not amount to corrupt practice.
(b)	Did they exhibit photographs of Mahatma Gandhi at liquor shops and elsewhere and treat electors with liquor ?	No.
XXVI.	Did Shri Barelal Kurmi and a Lodhi appeal to Kurmi and Lodhi electors on caste basis ?	No.
XXVII.	Did Shri Kashiprasad Pande appeal to Saryuparis on the basis of caste ?	No.
XXVIII.	Did Kirtimantrao and Mangru Wikey appeal to Gonds on the basis of their caste ?	No.
XXIX.	Did Shri Wikey and supporters of the first respondent appeal to Muslims by saying that Shri Jawahirlal was their friend and the second respondent their enemy ?	No.
XXX.	Did the first respondent and his agents employ on payment number of persons in excess of what is permitted by rule 118 of the Representation of the People (Conduct of Election and Election Petitions) Rules 1951 ?	No.
XXXI.	Did the first respondent employ Ishtiaq Ali and Komal Singh as polling agents ?	No.
	Were they Patels ?	No.
XXXII (a)	Were the ballot boxes such as could be tampered with ?	No.
(b)	Were those boxes after the poll not kept in proper custody ? Were they carried by peons only two days after the voting ?	They were always in proper custody.

	Issues	Findings
	(c) Were the votes found invalid not excluded from counting ?	No votes were found invalid.
	(d) Were the objections about the seals not being intact wrongly ruled out ?	No.
	(e) Were the irregularities deliberately committed to ensure the success of the first respondent ?	No.
	Have they affected the result ?	No.
XXXIII(a)	Has the first respondent given a false return of election expenses by not including :	
	(i) amounts spent by the Mahakoshal Congress Committee and Balaghat Congress Committee ?	Yes.
	(ii) amounts spent in connection with conveyances provided by State Ministers ?	Yes.
	(iii) amount spent on jeep car of Saugar University ?	Yes. But it is not decided if it belonged to Sugar University.
	(iv) amount Rs. 3,000/- spent in purchasing a car ?	No.
	(v) remuneration paid to agents, their travelling expenses and cost of entertainments ?	Yes.
	(vi) Expenses of journey and refreshments of State Ministers who travelled for promoting the election of the first respondent ?	Yes.
	(vii) cost of printing leaflets of Chari and Nistar and other leaflets issued by Congress Committees ?	No.
	(viii) All the payments made to Murli Mistri and Bengal House, for loud speakers ?	No.
	(ix) costs of cyclostyled bulletins issued by Mandla Congress Committee ?	No.
	(x) costs of letters, telegrams and telephone calls between ministers and others in connection with the election campaign ?	No.
	(xi) Rent of houses at Chiraidongri, Tantri, Pondri, Ghugri and other places hired for election work ?	No.
	(xii) amounts spent on petrol, mobile oil, on conveyances used ?	Yes.
	&(xiii) disputed claims. ?	No.
	(b) Were all the expenses duly authorised ?	Yes.
	(c) Has the first respondent spent more than what he was permitted to spend ?	Yes.
XXXIV(a)	What practices out of those that have been proved amounted to corrupt or illegal practices ?	See paragraph 130.
	(b) Was the election of the first respondent materially affected by corrupt or illegal practices ?	No.
	(c) Were the corrupt practices committed with the knowledge or connivance of the returned candidate or his agents ?	Does not arise.
	(d) What person or persons have been proved to be guilty of the corrupt or illegal practices ?	The first respondent only is guilty of corrupt practices as stated in paragraph 150.
XXXV(a)	Should the election of the first respondent be declared void ?	Yes.
	(b) Would the second respondent have obtained a majority of valid votes if the votes in favour of the first respondent affected by corrupt or illegal practices were excluded ?	No.
	(c) Should the second respondent be declared duly elected ?	No.

Reasons for the findings

7. *Issues Nos. 1(a), (b), (c), (d), (e) and (f).*—This issue arises out of pleadings made in paragraph 5 of the petition, which were denied in toto by the respondent 1. According to the petitioner, the Congress President by a circular authorised the leader of the Congress Party in the Madhya Pradesh Legislative Assembly to select a candidate to fill in the seat for Nainpur-Mohagaon Constituency and the Chief Minister of Madhya Pradesh was given a predominant voice in making the selection. The petitioner contended that the Ministers and officers of the Madhya Pradesh Government conducted the election on behalf of the respondent 1 and the difference between the Government and the Congress Party had thus been obliterated.

8. The testimony of the Chief Minister Pandit Ravi Shankar Shukla (P.W. 60) is material on this point and it has not been suggested by either party that the evidence is in any way incorrect. His evidence is also supported by the deposition of Shri Govind Das (P.W. 26) as far as this issue is concerned. According to their evidence the Leader of the Congress Party in the Madhya Pradesh Legislative Assembly was not authorised to select a candidate, but the selection rested with the Parliamentary Board of the All India Congress Committee which consulted the Leader of the Madhya Pradesh Congress Assembly Party, who merely made recommendations.

9. The letter Ex. P-110, dated 6th November 1952 sent by the Secretary of the All India Congress Committee to Shri R. S. Shukla, the Leader of the Madhya Pradesh Congress Assembly Party, shows that the Secretary of the All India Congress Committee asked for his opinion and the Leader of the Madhya Pradesh Congress Assembly Party communicated the approval of the candidate, the respondent 1, recommended by the Parliamentary Board of the Mahakoshal Provincial Congress Committee (See Ex. P-111). Thereafter the candidature of the respondent 1 was approved by the Parliamentary Board of the All India Congress Committee. In view of the evidence discussed above, our finding on issues Nos. I(a) and (c) is in the negative and on issue No. I(b) is in the affirmative.

10. The petitioner alleged that the Ministers of the State and officials of the State Government took part in canvassing votes for the first respondent; and that the Ministers used State cars for their tours for purposes of canvassing votes in favour of respondent 1 and also used Government buildings, like rest houses and circuit houses, for their residence and thus used the Government machinery for purposes of the election of the respondent 1. It is not disputed, and, indeed, in view of the overwhelming evidence it could not be disputed, that six Ministers of the State took part in the election campaign and addressed meetings attended by electors at different places within or adjoining the Constituency. There is no good evidence to show that any of the Ministers used the State cars for travelling to places within the Constituency. Their tour through the Constituency was an unofficial tour but they had not ceased to be ministers. During such unofficial tour also they are expected to attend to urgent State work. Merely because a minister is on unofficial tour (such as tour for party propaganda) he cannot lay aside his work as a minister of the State. But during his unofficial tour he is not permitted to use his position as a minister in his private work such as canvassing votes for a candidate set up by the party to which he belongs. The essence of the matter is that he cannot use his position as a minister in such a way as would result in depriving or diminishing the freedom of the electorate to vote in any manner they like. Some of the Ministers went as far as Mandla or Nainpur in the State car because their journey as far as those places was an official journey.

11. It appears the Ministers during their tour occupied the Government buildings meant for the residence of officers on tour, such as circuit houses and rest houses. The evidence of some of the Ministers shows that they paid for the occupation. Even if some of them did not, that cannot be regarded as a corrupt or illegal practice.

12. It was pointed out that Government servants attended upon the Ministers, arranged dinners and parties for them and thus took part in the election campaign. When the Ministers sent copies of their programmes to Government servants or when such programmes are published in the C.P. Gazette, it is the duty of such Government servants to receive them. There is, however, no evidence to show that Government officers had arranged dinners or parties for the Ministers or other persons who helped the respondent 1 in his election campaign. If people who entertained the Ministers also invited officers of the Government to attend such functions Government servants may have attended them; but that would hardly amount to the Government servants' taking part in an election campaign or their assisting any candidate in furtherance of his prospects in an election.

13. Our attention was drawn to the fact of the presence of police officers at public meetings addressed by Pandit Ravi Shankar Shukla and the other Ministers. We do not think this would amount to assistance by police officers in furtherance of the prospects of a candidate in his election. Police officers are expected to be present to prevent a breach of the peace, and we do not think the presence of police officers at a public meeting can be objected to unless it is proved that any of them took active part in any meeting or in convening any such meeting.

14. The Madhya Pradesh Government has been formed by the Congress Party and Ministers are prominent members of that party. In that capacity they are entitled to address meetings and to tell people what their party had done and what its programme was and to ask them to vote for the candidate set up by their party. Such an action of the Ministers cannot be held to amount to "exercising undue influence". There is no good evidence to show that any Government servant had taken part in the election campaign nor is there any evidence that the machinery of Government was used either for the selection of a candidate or for election propaganda or in any other way for the furtherance of the prospects of any candidate in the election. Our finding, therefore, is that the Madhya Pradesh Congress Assembly Party or the Ministers did not obliterate the difference between the party and the Government and our finding on issue No. I(d) is in the negative.

15. The Ministers in a State are generally leaders of the party they represent. Merely because they are Ministers, they do not lose their right to canvass votes for candidates set up by their party. It was argued that they are Government servants and they are subject to the restrictions imposed by section 123(8) of the Representation of the People Act, 1951. This was not specifically pleaded. There are no pleadings indicating that the canvassing by the Minister was objected to on the ground of its being a corrupt practice under section 123(8) of the Representation of the People Act, 1951. It was only pleaded that it amounted to undue influence. We however allowed the petitioner's counsel to argue the point and have considered it.

16. Reliance was placed by Shri Mandlekar on Emperor V. Sheonath Banerji (A.I.R. 1945 P.C. 156) in support of his contention that the Chief Minister and the other members are persons serving the State Government. In that case their Lordships observed that in so far as the decision in I.L.R. (1939) 2 Calcutta 411 (Emperor V. Hemendra Prasad Ghosh) decided that a Minister is not an officer subordinate to the Governor, their Lordships were unable to agree with it. A Minister would fall under the definition of public servant (clause 9) given in section 21 of the Indian Penal Code. But all public servants are not Government servants. The words used in section 123(8) of the Representation of the People Act, 1951, are:—

".....any person serving under the Government of India Act or the Government of any State."

The words would appear to be synonymous with "Government servant". Merely because a Minister would fall under the definition of a "public servant", it does not mean that he is a Government servant, for there are many public servants like Mayors of Municipal Corporations, Presidents of Municipal Committees or Honorary Magistrates who, though falling within the definition of public servants, are not Government servants.

17. Sheonath Banerji's case was decided under the Government of India Act, 1935. But the provisions in the present Constitution, it was argued, are similar to the provisions in the old Government of India Act regarding the exercise of executive powers of the State. Section 49(1) of the Government of India Act, 1935, laid down that:—

"The executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him."

Article 154(1) of the Constitution runs as follows:—

"The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution."

Thus, if under the old Government of India Act, Ministers were officers subordinate to the Governor, they would also have the same position under the present Constitution and they would be officers subordinate to the Governor. Does it mean that they would be Government Servants? An Honorary Magistrate would be an

officer subordinate to Governor, but we would not consider him a Government servant. The relations between him and the Government are not those of a servant and master.

18. Every officer is not necessarily a Government servant. What is essential is the relationship of master and servant should exist between the Government and another person to make such other person a Government servant, and ordinarily this relationship can only arise out of "contract". Can we say that there is relationship or "master and servant" between Government and a Minister, or there is any contract of service between them?

19. In common parlance, by "Government" is meant "the cabinet" (i.e. the Ministers). So, if the Ministers are themselves the Government, how can they also be servants? Our attention was drawn by Shri Mandlekar to the dictionary meaning of the word "Minister". The meaning of the word "Minister" given in the 'Concise Oxford Dictionary' is:—

"person employed in execution of (purpose, will, etc.); person administering department of State;....."

and the same word as a verb means:—

"Render aid or service to person, cause &c."

He argued that the word itself implied that the persons who occupy the position of Ministers render certain service. A Minister, according to him, therefore, is a Government servant.

20. Merely because a person renders service to another, he does not become such other person's servant, nor does the person to whom service is rendered necessarily become his master. The relationship of master and servant ordinarily arises out of a contract and implies the control of one over the other not simply as regards the work to be done by the other (servant) but also as regards the manner in which the work has to be done. This was the view taken in Mehta Gordhandas Girdharilal V. Shri P. B. Patwari and others (Election Petition No. 68 of 1952 decided on 27th June 1953. See *Gazette of India Extraordinary*, dated, 20th July 1953, at page 2435).

21. In England, Ministers are regarded as servants of the crown. Keith in "The British Cabinet System" says:—

"The National Government of Great Britain today is controlled by the Cabinet, who, indeed, are His Majesty's servants, but for all normal purposes servants whose advice the King must accept and readily does accept." (Chapter I, page 1).

At page 49 there is a reference to the case of *Lewis V. Cattle* (1935) (54 T.L.R. 721) wherein it was held that Ministers are both servants of the crown and hold office under it.

22. The learned counsel for the respondent 1 on the other hand drew our attention to a passage in Dawson's "Government of Canada" wherein there are remarks showing that Cabinet Ministers are allowed to participate and lend the Government candidate a helping hand. It would be useful to quote the observations relating to "by-election" from the book.

"The by-election is now straw vote based on a cold uniformed opinion; it is genuine contest conducted on well prepared ground and under substantially the same conditions as a general election. A comparatively obscure constituency may thus suddenly find itself the centre of national interest and disputation, and every voter in the area is made to feel that momentous issues hang on his considered judgment. Opposition leaders pour into the districts; the voters are overwhelmed by literature, canvassers, broadcasts, and public meetings; and even weary Cabinet Ministers will find time to participate and lend the Government candidate a helping hand." (page 383).

23. Even in England, where a minister is regarded a servant of the crown appeals by ministers to the electorate outside their constituencies are by no means uncommon. Instances of such appeals can be traced as far back as 1879 when Mr. Gladstone's famous Midlothian campaign succeeded in destroying the ministry. Keith in his *British Cabinet System* has referred to this as follows:—

"His famous Midlothian campaign in 1879(k) against the policy of the Government was successful in destroying the ministry, and the opposition leaders were not slow to follow suit, even Lord Salisbury

condescending to speak at public gatherings outside his constituency, a fact of which Mr. Gladstone reminded his sovereign when, in 1886, she called his attention to his allocations to enthusiasts at such informal places as railway stations". (Page 84).

24. The learned counsel for the respondent 1 argued that this is exactly what happened in the Constituency, and, merely because Ministers who belonged to the party which had set up the candidate went to canvass votes for him, it would not be corrupt practice. The question really is whether under the Constitution Ministers are servants of the Government of the State. As there is no contractual relationship of master and servant between them and the State we are not inclined to hold that the Ministers are persons in the service of the Government of Madhya Pradesh. Canvassing by them would not, therefore, be a corrupt practice under sub-section (8) of section 123 of the Representation of the People Act, 1951.

25. Ministers are officers appointed by the Governor but they are in no sense servants of the State Governments, and the rules requiring Government servants to refrain from taking part in election propaganda or in any other way assisting a candidate in an election, do not apply to them. It would be wrong to say that the election was fought out by the Ministers of the Madhya Pradesh Government on behalf of the respondent 1. The Ministers as citizens of this country and as members of the political party to which they belong, had every right to canvass votes for the candidate belonging to their party; and merely because they did so, it cannot be held that the election was not free and fair. Our finding on issue No. I(e) is that the election was free and fair and it was not fought out by the Ministers of Madhya Pradesh Government on behalf of the respondent 1.

26. The petitioner has given specific instances of bribery and undue influence in his petition, and the evidence regarding them will be discussed and a finding on them given in the paragraphs that follow. These instances, however, do not prove the prevalence of corrupt practices on such an extensive scale as to justify an order under section 100(1)(a) declaring the election wholly void. On behalf of the petitioner also it was urged that section 100(1)(a) did not apply and the petitioner's claiming a relief under section 101, the provisions of which are inconsistent with those of section 100(1)(a), also shows that application of section 100(1)(a) was not contemplated. Our finding on issue No. I(f) is, therefore, in the negative.

27. *Issue No. II.*—It was argued by the learned counsel for the petitioner that the Chief Minister Pandit Ravi Shankar Shukla and the Minister of Industries, Pandit D. K. Mehta forced respondents 3 and 4 to withdraw their candidature and they thus interfered with respondents 3 and 4's exercising their electoral right. According to the petitioner's counsel this was a corrupt practice of undue influence. He also argued that the Chief Minister Pandit Ravi Shankar Shukla and the Minister of Industries Shri D. K. Mehta induced Chaitram to withdraw his candidature on a promise of giving him a seat in the Council of States and this, according to the learned counsel, was a corrupt practice of bribery as, according to him, the bribe offered took the form of promise of a seat in the Council of States. The evidence of Chaitram (R. 3 W. 1), Pandit Ravi Shankar Shukla (P.W. 50) and Shri D. K. Mehta (P.W. 44) clearly shows that no force was used on Chaitram to compel him to withdraw. It was suggested by the learned counsel that, though no physical force had been used, a telegram from the Chief Minister and the Minister of Industries, whose very position could have the effect of overpowering the free will of an ordinary citizen, asking Chaitram to withdraw would amount to their exercising undue influence over him and this would be an instance of corrupt practice.

28. There is not an iota of evidence to show that Pandit Ravi Shankar Shukla or Shri D. K. Mehta ever asked or even suggested to respondent 4 that he should withdraw his candidature. So far as respondent 3 is concerned his own evidence is to the effect that after his withdrawal he received a telegram from Pandit Ravi Shankar Shukla and Shri D. K. Mehta "advising him to withdraw". We have it from his evidence, as also from the evidence of Pandit Ravi Shankar Shukla and Shri D. K. Mehta, that the relations between them are friendly and Chaitram has regard for Pandit Ravi Shankar Shukla and Shri D. K. Mehta. On account of the personal relations between them, Pandit Ravi Shankar Shukla and Shri D. K. Mehta may have asked Chaitram Chaudhari to withdraw. That cannot amount to interference with or attempt to interfere with the electoral right of Chaitram Chaudhari. As friends of Chaudhari Chaitram and his family, they had a right to advise him and their advising him to stand or not to stand in the election would not amount to interference with his electoral right.

29. It was argued that, because the telegram was not produced by Chaudhari Chaitram and its copy had not been produced by Pandit Ravi Shankar Shukla or Shri D. K. Mehta, an adverse inference arose against them and we should

hold that if the telegram had been produced that would have gone against Pandit Ravi Shankar Shukla and Shri D. K. Mehta. The argument assumes that the telegram or a copy of the telegram had been preserved by these witnesses and they had suppressed it. Chaitram, Pandit Ravi Shankar Shukla and Shri D. K. Mehta have explained that they did not care to preserve these documents. This would also appear natural since they had no reason to anticipate that they would be called upon to produce the documents. The petitioner could have asked the telegraph department to preserve the original of the telegram after the result of the election had been announced. But he did not care to do it. We do not think, under the circumstances, that we would be justified in raising the inference that the telegram would have gone against the witnesses had they produced it. Moreover, it is only the party's conduct that leads to the raising of an adverse inference against him and not the conduct of the witnesses.

30. As regards the petitioner's plea that the corrupt practice of bribery had been committed by offer of a seat to Chaitram in the Council of States, the only evidence adduced on behalf of the petitioner is the half hearted evidence of Vishwanath Prasad Bajpai (P.W. 16) on the point and the evidence of Shri D. P. Pathak (P.W. 27). According to Shri Bajpai (P.W. 16), Chaitram only told him that he had been given an assurance that he would be taken up as a member of the Council of States, but the name of the persons who had given such assurance had not been disclosed to him. According to Shri Pathak (P.W. 27), Chaitram had declared in the Bar Room at Mandla that he received a telegram from the Chief Minister and Shri D. K. Mehta asking to withdraw in favour of Shri Surendralal Jha and promising him a seat in the Council of States. Chaitram (R3W1) denied that he ever made any such declaration. Had any such declaration been openly made in the Bar Room, Shri Bajpai would have known the names of the persons who had made the promise. Bajpai's evidence is thus inconsistent with the theory of the alleged declaration. On this evidence we are not prepared to hold, especially when Pandit Ravi Shankar Shukla, Shri D. K. Mehta and Chaudhari Chaitram have stated on oath that no such promise had been made, that any promise of a seat in the Council of States had been held out to Chaitram or that Chaitram's withdrawal of his candidature was in consequence of any such promise. We, therefore, find in the negative on Issue No. II.

31. The learned counsel for the petitioner while opening his argument asked us to fully believe and act upon that part of the evidence of his witnesses which has not been challenged in cross-examination. It was argued by the learned counsel that, if on any point a witness was not cross-examined his deposition on that point should be accepted as true. This rule is not universally applied, and where a witness is not cross-examined on any point it cannot be said that the party failing to cross-examine him accepts the evidence as correct or true for such a party has the option of examining his own witnesses to disprove the facts deposed to by such witness. It is possible that a party may feel on account of the discrepancies or defects in the deposition of a witness or on account of the weakness intrinsic in the evidence that it is not necessary to cross-examine such a witness; and where number of witnesses are examined on the same point the evidence of the witnesses may be so conflicting that it may not be necessary for a party to cross-examine the witnesses giving such evidence. We are not prepared to hold that merely because a witness is not cross-examined his evidence has to be accepted as true.

32. *Issue No. III.*—This issue arises out of the pleadings made by the petitioner complaining against the conduct of Shri D. K. Mehta, Minister of Industries in this State. In order to find out what part was played by Shri D. K. Mehta, his own deposition as P.W. 44 may be relied upon. He deposes that he and "the Chief Minister wired to Chaitram Chaudhari to withdraw from the election in the interest of the Congress"; that his tour in the Mandla district was of "duel character"; that at Nainpur he addressed a meeting in connection with the election and must have replied to the grievances which may have been brought to his notice and that he "had arranged for cars for the by-election to be sent out from Tumsar and Gondia". He can thus be said to have taken part in organizing and carrying out the election campaign and in canvassing votes for respondent 1.

33. "Canvassing", according to the Parker's Election Agent and Returning Officer (5th Edn. page 70), means endeavouring to persuade any person to give or dissuade any person from giving his vote whether as an elector or proxy. It seems, according to the law in England, no Minister of the crown or crown servant and no member of the police force, should engage in canvassing, or be appointed or accepted as a canvasser. (See Parker's Election Agent and Returning Officer, 5th Edn. page 71). There appears to be no law in India prohibiting the State Ministers from taking part in canvassing votes for others. The State Ministers wield considerable influence, and when they canvass, they use that influence. But

the influence cannot be called undue influence, for the law does not prohibit canvassing by Ministers and it is not illegal for them to use that influence. That a minister can take part in canvassing votes for the candidate or candidates set up by his party has been held in *Sharma Shri Krishna Sharma Gurudayal Sharma, V. Desai Khandubhai and others (Gazette of India, Extraordinary, dated 15th March 1954)* where the learned members of the Tribunal observed:—

“Shri Rasiklal Parikh is admittedly a prominent Congress leader in Saurashtra and is entitled to use his influence as a Congress leader. He cannot be deprived of this right simply because he happens to be a Minister. See Bengal Legislative Council case No. 3 I.N.C.D. Vol. II, p. 368. Shri Rasiklal addressed numerous public meetings and at these meetings he has exhorted the people to vote for the Congress but he had the same right to canvass votes for the Congress as the petitioner and other Hindu Mahasabha leaders had of touring the constituency and canvassing votes for that body which right they appear to have freely exercised. Therefore the allegation that Sjt. Rasiklal Parikh toured the constituency in his official capacity and thereby unduly influenced the people clearly fails. (Page 383).

It does not appear that any influential elector had been approached by Shri D. K. Mehta. Our finding on this issue is, therefore, in the negative.

34. *Issue No. IV.*—The petitioner has contended that Shri D. K. Mehta, the Minister of Industries, holding the portfolio of forests during the election tour passed an order applying the Nistar rate of bamboos to the supply of bamboos for commercial purposes (to Basors) and that this concession was given with the corrupt motive of inducing the electors to vote for the congress candidate. That order is Ex. P-49. It was passed on 1st December 1952 at the circuit house at Mandla. The order fixed the limit for the supply of bamboos at the reduced rate “for the present” and directed “the needed announcement to be made”. It was forwarded to the Divisional Forest Officer, Mandla, for “necessary action in anticipation of Government sanction.”

35. Before the order, the rates for all the bamboos supplied to Basors for the commercial purposes of making “baskets and other wares” were more than three times the rate at which bamboos were given for Nistar or home consumption. In Mandla district the rate for bamboos supplied for commercial purposes was Rs. 5 per hundred and that for bamboos supplied for Nistar was Rs. 1-8-0 per hundred. There can be little doubt that the order was made by Shri Mehta, the Minister for Forests, who was the first among the Ministers to visit the constituency and who fired the first shot in the election campaign (*vide* paragraph 21 of the deposition of respondent 1).

36. Shri D. K. Mehta left Nagpur on 27th November 1952 and after a halt at Seoni on 28th November 1952 reached Nainpur, an important centre in the Nainpur Mohagaon Constituency on 29th November 1952. After addressing an election meeting at Nainpur on 29th November 1952, he went to Mandla on the following day and from Mandla proceeded to Anjeniya and Bhuwa Bichiya to address election meetings there. What happened at the village Madhopur, which he happened to pass on the way from Mandla to Anjeniya, is given below in the words of Shri D. K. Mehta (P.W. 44):

“During my tour I happened to pass Madhopur, where a P.S.P. meeting was in progress. As my car passed some people came to me. one of them was a Jha and he told me that the high rate of bamboos charged to Basors affected the agriculturists in general and the Basors in particular as the agriculturists could not secure the Basor-wares at reasonable rates. I took a mental note of it, and it is my practice to discuss these and such matters with officials concerned and if I could redress the grievances then and there I pass orders. Next day at the circuit house at Mandla I passed orders on this subject.”

37. The Respondent No. 1's version of what happened at the meeting at Anjeniya is as follows:—

“I was with Shri Mehta at Anjeniya. At that time about 200 men had collected there and there was a discussion between him and the people. I was present at that time. When Shri Mehta asked the people to vote for the congress they complained that the Congress Government had raised the rates of bamboos, and it was not possible for them to expect their votes. Shri D. K. Mehta then said that the Basors had been engaged in cottage industries and that he would reduce the rates of bamboos to encourage the cottage industry.”

The order Ex. P-49 passed on the following day at the circuit house Mandla shows that at the time of the recording of the order there was some discussion with Government officials as regards the limit for the supply of bamboos at the Nistar rate (the limits suggested varying between 1500 to 2000 bamboos), and that it had been decided that a uniform policy for the whole of the State should be declared afterwards, and that the order was to receive the sanction of the Government. It was, however, ordered at that very time that the needed announcement reducing the rate of bamboos should be made at once and that with that end in view a copy of the order was forwarded to the Divisional Forest Officer Mandla "for necessary action in anticipation of Government sanction". We do not know whether the order was sent to any other district in the State for the necessary action of announcement (needed announcement in anticipation of Government sanction).

38. It would appear from the evidence on record that the order reducing the rates of bamboos for Basors was not simply meant to benefit the basors but also to benefit the agriculturists in general who use articles manufactured by Basors out of bamboos. It was contended on behalf of the petitioner that the reduction of the rates of bamboos was intended to enable the Basors to sell articles manufactured by them at rates considerably below the rates at which those articles used to be sold before the reduction in the rate of bamboos for Basors (before 1st December 1952). The reduction in the rate of bamboos, it was argued, was an offer of bribe to the electorate in the shape of an offer of articles manufactured by Basors at cheaper rates, and it was contended that the respondent 1 and his agent Shri D. K. Mehta were guilty of the corrupt practice. It was also contended that Shri D. K. Mehta as a minister was a Government servant and his reducing the rate of bamboos amounted clearly to his assisting respondent 1 in furthering his prospects at the election and the respondent 1 was, therefore, guilty of the corrupt practice referred to in sub-section (8) of section 123 of the Representation of the People Act, 1951.

39. Their Lordships of the Supreme Court in Constitution Bench in the case of *Rajkrishna Bose V. Binod Kanungo* (A.I.R. 1954 Supreme Court 202) observed:—

"The policy of law is to keep Government servants aloof from politics and also to protect them from being imposed on by those with influence or in positions of authority and power, and to prevent the machinery of Government from being used in furtherance of a candidate's return."

These observations might have applied and it might have been possible to hold respondent 1 guilty of corrupt practice of obtaining assistance from a Government servant in furtherance of his prospects in the election had we held a minister to be a Government servant.

40. The orders reducing the rates of bamboos were made under circumstances which clearly show that the orders were bound to affect the voting at the impending election. The electors had brought it to the notice of the Minister that his party had raised the rates of bamboos and could not expect votes for the candidate set up by his party. The hardship caused by the raising of rates of bamboos vividly placed before the Minister and the Minister, therefore, reduced the rates of bamboos. The threat that the candidate set up by his party would not have voted may have induced the Minister to reduce the rates of bamboos. But would that by itself amount to corrupt practice? In our opinion, it would not, unless the Minister also goes further and asks the electors to promise votes to the candidate set up by his party.

41. The Ministers who are the leaders of the majority party in a Legislative Assembly may not be conversant with the local grievances of people in some areas. It may happen that these grievances are brought to their notice during their tours of the different areas during the course of an election campaign. What should a Minister then do? Should he redress the grievances if they call for immediate redress or should he allow the people to continue to suffer till the result of the elections is declared?

42. It appears to us that it would be the duty of a Minister to redress such grievances of the people as call for immediate redress; he would be failing in his duty if he does not do it, merely because it may affect voting at the ensuing election and form a ground for complaint (*viz.* the redress of the grievances was a device adopted to influence the elector to gain votes for the party whom the Ministers represent). Thus, for instance, if a Minister for Health were, in connection with an election campaign, to visit an area afflicted by an epidemic, would it not be such Minister's duty to render immediate help to the people of the affected area and to try to suppress the epidemic or at least prevent it from

spreading? Would it not be his duty to depute officers of the Health Department for the purpose, or should he refrain from giving any help to them because it would otherwise be construed as an attempt to influence an election? It appears to us that it clearly is the duty of such a Minister to immediately rush to the help of the people; but while doing so he must not ask the people to vote for him or any candidate belonging to his party. The help rendered should not be on condition that the people should vote for him or a candidate of his party. If he redresses their grievances or renders to them any help he would not be guilty of a corrupt practice unless he obtains a promise from the electors or imposes a condition on them that they should vote for him or any other candidate.

43. There is no evidence in this case that Shri D. K. Mehta obtained any promise from the electors or reduced the rates of bamboos on condition that they would vote for a candidate set up by his party. He may have known that the result of reducing the rates of bamboos at the crucial moment would have some effect on the election. But can it be said that he reduced the rates of bamboos with the intention that it should affect the election? We are doubtful on this point, and we think the benefit of doubt must be given to the respondent 1 and the witness Shri D. K. Mehta. His failure to render help or to redress the grievances of the people would have amounted to a breach of duty. It is equally probable that this urge of duty induced him to reduce the rates of bamboos. Moreover, this was not done only for this area, but the benefit of the order was to be reaped by people throughout the State. It would, therefore, be difficult to hold that the intention was to promote or procure the election of respondent 1 and it was not done in due discharge of his duties by Shri D. K. Mehta.

44. It was brought to our notice that the orders for printing the pamphlet Ex. P-2 were issued by the Madhya Pradesh Government on 28th November 1952 and yet they contained the orders made by the Government on 12th December 1952 (Ex. P-38). The election manifesto Ex. P-58 published by Shri S. S. Mushran, the Secretary of the Mahakoshal Congress Committee Jabalpur, contains a long extract of about 3,500 words covering 3 pages out of 4, copied out from Ex. P-2. Ex. P-2 actually came out of the press on 9th December 1952. But Ex. P-58 was printed and delivered to the Congress Committee on 5th December 1952. The publisher of Ex. P-58 Shri S. S. Mushran, the Secretary of the Mahakoshal Congress Committee Jabalpur, explained that the Government orders apparently of a subsequent date must have been included in the pamphlet from some earlier edition of Ex. P-2. But the evidence of K. G. Joglekar (PW 1) shows that this explanation is not correct, as according to him, no such pamphlets were ever printed before and an earlier edition was thus impossible.

45. We had asked the Government to produce the original of the pamphlet Ex. P-2, and those documents along with a covering letter were received by us. They show that the contents relating to the reduction of the rates of bamboos had not been included in the original and the letter shows that they were subsequently added while the pamphlet was in the press. It appears the Publicity Department informed the press of the orders made by the Minister on 1st December 1952 and paragraph 7 in Ex. P-2 under the head "Concessions to agriculturists in respect of reserved forests" came to be included on Government's making the orders, a formal draft of which seems to have been issued later on the 12th December 1952. It appears the Mahakoshal Congress Committee, through some one secured a copy of the pamphlet Ex. P-2 which had been sent for printing to the Government press as amended (by addition of paragraph 7 mentioned above) and they included it in the election manifesto Ex. P-58.

46. *Issue No. V.*—Shri D. K. Mehta, the Minister for Industries, admitted that he had asked mine owners to send their cars to help the first respondent in his election propaganda. There is no evidence of any pressure used on the mine owners, but our finding on issue No. V is that the Industries Minister Shri D. K. Mehta had asked the mine owners to send and the mine owners had sent their cars to be used for promoting the election of the first respondent. Such an action on the part of a person, whether a Minister or not, would not amount to any corrupt or illegal practice.

47. *Issue No. VI(a).*—There is no evidence to show that the meetings addressed by the Chief Minister were arranged by any Patel, Patwari or Kotwar or any other Government servant. One Bhagwandas Saini issued two notices on 18th December 1952 (Exs. P-44 and P-45), one of them addressed to Aklu Bhoi of Narendragarh and another to Bhandari Bhoi. In the notice Ex. P-45 addressed to Bhandari Bhoi, there appear names of two patels, Chamru Patel and Dhiru Patel. But it is doubtful if they were working as patels, for every person of importance in a village is addressed as a patel, which is a term implying respect and is used in addressing respectable people in villages. In these notices Aklu

Bhoi and Bhandari Bhoi, and perhaps Chamru Patel and Dhiru Patel were asked to bring people of the village including "Mukaddams, Patels and Kotwars and other persons of importance" to attend a meeting to be held on 20th December 1952 at 12 in the noon at Kindri. The very fact that these addressees were asked to bring with them Mukaddams, Patels and Kotwars of the villages would show that the addressees were themselves not Mukaddams, Patels or Kotwars. It is impossible, therefore, on this evidence to hold that Patels, Mukaddams or other village officers were asked to help, or they actually helped, for collecting people to form meetings to be addressed by Ministers or other persons.

48. The village officers referred to in the Explanation under sub-section (8) of section 123 of the Representation of the People Act, 1951, are "persons serving under the Government of a State" as laid down in that section, and the giving of vote by such person is not such assistance for the furtherance of the prospect of a candidate's election as amounts to corrupt practice under sub-section (8) of section 123 of the Act. A candidate, his agent or any other person with his connivance is entitled to obtain or attempt to obtain the vote of a person serving under the Government of India or the Government of any State; and in doing so, if the candidate or his agent or any other person working for him asks such person serving under the Government of India or the Government of any State, to attend any meeting or in any other lawful manner induces such person to vote for a candidate, that would not be corrupt practice. A candidate or his agent or any other person working for him, therefore, is entitled to ask village officers who under the Explanation under sub-section (8) of section 123 of the Act can be regarded as serving under the Government of India or the Government of a State, to attend a meeting and that would not be a corrupt practice.

49. The evidence of Shri Pagay (PW 32) shows that leaflets regarding Chari and Nistar rights printed at the Government Press Nagpur, were handed over by the Personal Assistant of the Chief Minister to the Deputy Commissioner Mandla for immediate distribution to the people. That was intended to remove some misunderstanding among the people regarding the Government orders curtailing their rights to Chari and Nistar. The Deputy Commissioner, Shri Pagay also admitted that these pamphlets were distributed through revenue agency. There was, in our opinion, nothing wrong in the Chief Minister's or any other Minister's asking the Deputy Commissioner to see that the concessions given by Government to rural population were widely known. If Government issued pamphlets showing what they had done for the people they committed no wrong and their action would not be wrong merely because the pamphlets were issued during the election days. What would not otherwise have been wrong does not become wrong because it is done during the days of election. Our finding on the first part of issue No. VI(a) is in the negative, and on its second part, in the affirmative.

50. *Issue No. VI(b).*—The evidence of Shri Anand Mangal Mishra (PW 34), who was then working as a Treasurer of the Sagar University, shows that Pandit Ravi Shankar Shukla (PW 60) had asked him to send some cars from Sagar. The evidence of Pandit Ravi Shankar Shukla also shows that he had asked Shri Anand Mangal Mishra to send jeep cars. Shri Anand Mangal Mishra (PW 34), however, denies that any car belonging to the Sagar University had ever been sent. As against the statement on oath of Shri Anand Mangal Mishra, who is petitioner's witness, there is another statement on oath of his other witness Maheshdutta Dubey (PW 45) who says that he had seen the Sagar University jeep car with a congress flag and congress poster on it at Mandla after the closure of the polls on the polling day. He has given the number of the car. In view of this conflicting evidence of the petitioner's witnesses it is not possible to hold that the Sagar University jeep car had been used during the by-election.

51. It is clear from the evidence of Pandit Ravi Shankar Shukla (PW 60) that he had asked Anand Mangal Mishra to arrange for cars from Sagar and Anand Mangal Mishra had arranged for two cars from Sagar, one of which, according to him, was a jeep belonging to one Bhagwandas Shobhalal a bidi merchant of Sagar. It is also clear from the evidence of Pandit Ravi Shankar Shukla (PW 60) that he spent money on his tour of the Constituency. It is possible, as the Leader of the Congress Party he may have asked important persons of his party to visit the Constituency and to explain to the people what his party had done for them and thus indirectly to promote the election of the respondent 1. Pandit Ravi Shankar Shukla did so, not as the Chief Minister of the Madhya Pradesh Government but as the Leader of the Congress Party in the Legislative Assembly of Madhya Pradesh. It would be wrong to hold that he could not do this because he was also the Chief Minister of Madhya Pradesh. Thus as regards Issue No. 6(b) we hold that Pandit Ravi Shankar Shukla did arrange for men, money and conveyances for promoting the election of respondent 1, but he did not do so as the

Chief Minister of Madhya Pradesh, and that the petitioner has failed to prove that he (Pandit Ravi Shankar Shukla) had arranged for the supply or use of the jeep car belonging to the Sagar University during the said election

52 *Issue No VII(a) and (b)*—The witnesses, who deposed that they had heard the speeches delivered by Shri Brijlal Biyani, the Finance Minister, do not say that he had said that if the electors voted for the 2nd respondent their grievances would not be redressed. On this point and other points to be proved by the petitioner, the petitioner relied on the messages published in the news papers regarding speeches delivered in the election meetings. The copies of news papers prove that such newspapers were printed and published but they are no proof of their contents. The messages appearing in the news papers cannot be held to have been proved. The copies of news papers are not admissible in evidence to prove the news items published therein. The truth of the news items published in news papers is altogether a different matter. It is common knowledge that reporters who send news have often no personal knowledge and no reliance can, therefore, be placed on news papers reports even if they are admitted into evidence. Similarly, press reporters publish result of their enquiries and pass it as a news item. The news paper reports, therefore, cannot be admitted into evidence. It was pointed out in *Bawa Sarup Singh Vs The Crown* (AIR 1925 Lahore 299) that news papers even if admissible are no proof of contents as they are mere anonymous statements. There is no good evidence, in our opinion to prove that Shri Brijlal Biyani, the Finance Minister, ever said that if the electors voted for the 2nd respondent their grievances would not be redressed.

53 The evidence does show that Shri Brijlal Biyani had said that in democracy rulers came out of the ballot boxes. That was a figurative expression of the idea that rulers were not born or the right to rule did not descend from the father to the son as in the olden days. It is possible, it was implied in his speech that if the electors voted for the Congress party they would be adding to the strength of the ruling party and could get their grievances redressed through a member belonging to such party. If he said this, there was nothing wrong, and it was not necessarily implied in this that their grievances would go unredressed if they voted for a candidate belonging to any other party.

54 Wasudeo (PW 24) deposed that Shri Biyani had said that those who were not congressmen (it was probably implied that those who belonged to the Praja Socialist Party had not a broad outlook but were, petty minded and took notice of even the shoes which Congress leaders like Ministers were wearing. This was only a way of criticising the opponents. Shri D P Pathak (PW 27) and Shri Rajpal (PW 16) also support the evidence of Wasudeo on this point. Shri T K Bhaduri (PW 41), the chief reporter of Nagpur Times, also supports the evidence of Wasudeo (PW 24) on the point. But this evidence does not prove any undue influence.

55 It was argued by the learned counsel for the petitioner that the speech delivered by Shri Brijlal Biyani was so improper and so venomous that it was bound to have the effect of making the electorate believe that they had no alternative but to vote for the "pair of bullocks with yokes on" symbol, the symbol of the Congress Party which had the reins of administration in its hands. We are not concerned with the manner in which the system of democratic government was explained to the people by Shri Brijlal Biyani. The language may not have been very apt or may have even bordered on vulgarity as was suggested by the counsel for the petitioner. But no objection could be raised to it before the Tribunal unless it was shown that the use of the language amounted to "undue influence". Thus, however improper it may have been to compare the king with the ruling party and the birth of the king from the womb of the queen mother with the birth of the ruling party from the womb of ballot boxes, there was nothing in the speech that could amount to "undue influence". We find accordingly on Issues VII(a) and (b).

56 *Issue No VIII*—There is some evidence to show that Mangru Wikey announced a donation for founding a school at Nainpur. But there is no evidence to show that the Health Minister Shri Kannamwar promised any hospital for Nainpur. Shri Kannamwar denied that he had made any such promise. The petitioner himself examined him as a witness, and he cannot ask us to disbelieve the evidence of Shri Kannamwar. Moreover, there is nothing in his evidence to indicate that what is stated is not true. Our finding on Issue VIII is, therefore, in the negative.

57 *Issues Nos IX & X*—There is no evidence to show that Shri Shankar Lal Tiwari, the Agriculture Minister, promised taccavi or water supply to induce electors to vote for the first respondent. There is no good evidence to show that

the Chief Minister or the Minister of Industries permitted export of maize to win over traders of Mandla to support the candidature of the first respondent Gulabchand Gupta (PW 21), whose evidence covers almost all the grounds raised in the petition for setting aside the election of respondent 1 and who, therefore, was dubbed by respondent 1's counsel an "omnibus witness", deposed that after the visit of Shri Shukulji (Pandit Ravi Shankar Shukla) maize was allowed to be exported from Mandla district and that the merchants who used to deal in maize started vigorously working for the congress candidate after his visit. This evidence is not sufficient to show that export of maize had been permitted by Pandit Ravi Shankar Shukla. It is clear from the evidence of Shri Pagay (PW 32) that the grain merchants of Mandla entertained the Chief Minister at a tea party and that the orders removing restrictions on the export of coarse grain including maize were made not by the Chief Minister but by the Central Government. That was about the 20th December, 1952. In view of this evidence, it would be wrong to connect the export of maize with the visit of Pandit Ravi Shankar Shukla. Our finding on Issues Nos. IX and X, therefore, are in the negative.

58. *Issue No. XI.*—The evidence on record clearly shows that Pandit Ravi Shankar Sukla, the Chief Minister, Shri D. K. Mehta, Minister of Industries, Shri Brijlal Biyani, Finance Minister, Shri Shankarlal Tiwari, Minister for Agriculture, Shri Dindayal Gupta Food Minister and Shri Kannamwar, Health Minister did not actually perform the tour of the constituency in Government cars. Pandit Ravi Shankar Shukla, Shri Brijlal Biyani and Shri Dindayal Gupta did not even cover a part of the journey in Government cars. They used private cars throughout their journey. Shri S. L. Tiwari went to Balaghat in the State car and Shri Kannamwar went to Mandla in the State car as these were official tours.

59. There is no evidence to show that the services of Government servants were utilised by the Ministers who visited the constituency for the purpose of influencing voters for promoting the election of the first respondent. There is no doubt that they used the rest houses, but I do not see how any objection could be raised to the use of the rest houses by them. Even assuming that a Minister on a private tour uses a rest house or circuit house for his temporary residence, that would not amount to corrupt practice. There is nothing illegal in a Minister's combining his non-official work with his official work and occupying rest or circuit houses during his tour. Some very useful observations pertinent to the point under consideration are to be found in *Babu Gajendra Chandra Chaudhury and seven others V. The Hon'ble Rai P. C. Datta Bahadur* (Case No. XLIX Hammond's Election Cases 1920-1935 at p. 387); the case was decided as far back as 1924:—

"We are not aware of any rule requiring a Minister to resign office before offering himself as a candidate for re-election. We cannot therefore say that the respondent committed any irregularity in choosing to remain in office while conducting his election campaign. In the circumstances, it was inevitable that he should, to a certain extent, combine canvassing with official work. It was also inevitable that whenever he went out canvassing he should be attended 'with all the prestige and powers of his official position'. We do not see how he could leave these behind so long as he was Minister, any more than he could leave his shadow behind."

There was, therefore, nothing illegal in the Minister's occupying rest and circuit houses. There was also nothing wrong in their using the State cars for part of journeys which they performed in their official capacity. We find accordingly on issue No. XI.

60. *Issue No. XII.*—Shri D. P. Pathak (PW 27) deposed that one Ghasita Patel of Kariyagaon was seen taking voters to a polling booth. We have already stated above that 'Patel' is an honorific term which is often affixed to the name of a respectable man in a village. There is no evidence to show that Ghasita was really working as the patel of any village. No copy of appointment order of Ghasita has been filed. We are, therefore, unable to hold that he was working as a patel of any village.

61. Akali (PW 37) says that Ramprasad patwari had asked him to vote for the congress. This Ramprasad patwari as R1W 11 deposed that Akali (PW 37) and other residents of his village Mawai (had made complaints against him and were hostile to him. We cannot, therefore, accept the evidence of Akali (PW 37) unless it is corroborated by some other trustworthy evidence. There is no other evidence to support Akali, and on his evidence we are not prepared to hold that Ramprasad patwari canvassed votes for the congress candidate. Mattulal (PW 23) says that one constable named Bhilansingh was seen distributing leaflets issued by the Congress party. His evidence also is not corroborated by any other witness. Balmukund Swami (PW 46), a pleader of Jabalpur, says that a constable and two

homeguards tore to pieces "Jhopadi Chhap slip" and that the voter from whom they had got it was asked by them to vote for Congress. He deposed that he had seen the voter himself and asked him to vote for Bail Chhap but that he "refused saying that he had been asked by Government servants to vote for Bail Chhap". The elector could have been produced as a witness but was not produced. Balmukund Swami did not care to note the number or name of the police constable. There is nothing to show that these persons were employed by the first respondent or that what they did was with the connivance of the first respondent. Since the names of the persons are not known, no action also can be taken against them. Even assuming Shri Swami's evidence to be true, the responsibility for what the Government servants did could not be fastened on respondent 1. It cannot, therefore, beheld that respondent No. 1 obtained or procured or attempted to obtain or procure, or his agents or any other person with his connivance obtained or procured or attempted to obtain or procure the assistance of any person serving under the Government of India or the Government of this State for the furtherance of his prospects in the election. Our finding on Issue No. XII is in the negative.*

62. *Issue No. XIII.*—The Prime Minister of India, Pandit Jawaharlal Nehru, is no doubt the President of the Indian National Congress. We do not know what the Constitution of the Indian National Congress is. We cannot, therefore, say if everything that the General Secretary of the Indian National Congress does is done by him under instructions or with the knowledge or consent of the President of the Indian National Congress. The General Secretary of the Indian National Congress, Shri Balwantrai Mehta in his letter Ex. P-109 dated 22nd November 1952, no doubt asked the Chief Minister who was also the leader of the Congress Party of the Madhya Pradesh Legislative Assembly, to do all that was possible to see that the congress nominee came out successful in the contest. In his letter dated November 13, 1952 (Ex.P-103) the General Secretary wrote:—

"I have learnt reliably that Shri D. P. Mishra intends to contest the Mandla seat against the Congress candidate. If this is true, I think we will have to mobilize all our resources for the Congress Candidate. You will agree with me that it is essential for the Congress to win this seat against Shri Misra."

63. It would appear from this that there was a directive from the General Secretary of the Indian National Congress to Pandit Ravi Shankar Shukla, the Leader of the Congress Assembly Party of Madhya Pradesh, to mobilise all resources at his command and to do everything possible to see that the congress candidate came out successful in the contest. In pursuance of this directive Pandit Ravi Shankar Shukla issued letters to his friends requesting them to make "every possible effort" for the success of the congress candidate. To make "every possible effort" would mean "every effort that could properly be made", and would not mean "doing anything improper or illegal". There is no doubt that the entire Congress organisation took interest in the by-election and "mobilised all its resources" for the Congress candidate. There may have been unprecedented propaganda and the congress organization may have succeeded in creating public opinion favourable to itself and the candidate set up by it; but unless it is shown that the influence, exercised by the prominent members of the congress who visited the Constituency was "undue influence" the election cannot be set aside. Our finding on Issue No. XIII, therefore, is that the Prime Minister did not press, but the General Secretary of the Indian National Congress did press Pandit R. S. Shukla to do all that he could to bring about the defeat of the second respondent; this could not be said to be improper.

64. *Issue No. XIV.*—There is no evidence on this issue and our finding on it therefore is in the negative.

65. *Issue No. XV(a).*—Gulabchand Gupta (PW 21) deposed that near the place of an election meeting addressed by Shri Mangru Wikely in a school building some cans containing some liquid were seen and people were seen going towards the cans and drinking the liquid. The suggestion is that the can must have contained liquor. There is, however, no evidence to show that it was liquor. It is not known who had arranged the meeting or who had kept the cans containing whatever liquid there may have been. On this evidence it is not possible to hold that either the cans contained liquor or that respondent 1 or any of his workers was responsible for keeping the cans there.

66. Wasudeo (PW 24) says that he saw liquor being carried in Kawads by congress workers who were going out for propaganda work. He had to admit, however that he had not seen liquor being given to any of the persons by any worker.

67. There is evidence to show that some of the workers of respondent 1 were Gonds and if respondent 1 or his agents were responsible for supplying food to the workers they are also responsible for supplying them with liquor because it is a notorious fact that drinking is very common among Gonds to whom liquor is as necessary as food. From the Congress workers taking liquor with them no inference of "treating" arises.

68. Wasudco (P.W. 24) deposed that at Urwahi he met many Gond voters whose breath smelt of liquor and who were not in their senses. He says:—

"I found that a number of Gond voters who came from the side of the Nala came drunk. Beyond the nala were kept two tins from which liquor was served to the voters by men who had Bail Chhap Billa. It was a paper badge with the picture of bullock fastened on the wearing apparels of those who served liquor."

Regarding the size of the badge he said:

"The badge was as big as the palm of a hand and I could clearly see the badge of bullocks with yoke on."

The distance between him and the men who were serving liquor was, according to the witness, $1\frac{1}{2}$ furlongs to 2 furlongs. We are sceptical about such a small object being visible from such a long distance. The witness seems to have drawn upon his imagination. In his own report to the newspapers he made no mention of people wearing Bail Chhap badge distributing liquor. It would appear highly improbable that he would omit mentioning such an important fact in his report. It appears to us quite probable that the Gond electors may have come heavily drunk to the polling station, but from this we are not prepared to conclude that it was respondent 1 or his agents or other workers who had supplied liquor to the Gond voters.

69. Bhaiyalal (P.W. 40) deposed that one Bhairava Bramhan of Ramnagar had called him and paid him Rs. 2 for the purchase of liquor for himself and some 4 or 5 leaders of his community with a view to secure votes for the Congress. According to him, he and other leaders of the Gond Community who were supplied with liquor had worked for Congress. We do not know who this Bhairav Bramhan was and how he was connected with the Congress organization or with respondent No. 1. It is not improbable that the offer of liquor by Bhairava Bramhan to Bhaiyalal and others was a mere act of customary hospitality, for drinking is rampant among Gonds. They could not be expected to adopt the rule of prohibition for themselves. The offer of liquor worth Rs. 2 to the witness or 4 or 5 other Gonds cannot be said to be a bribe nor can it be said to be treating. Moreover, as no connection between Bhairava and respondent 1 has been established, respondent 1 cannot be held guilty for the acts of Bhairava. There is no evidence to show that this was done at the instance of respondent 1 or his agents or with the connivance of any of them. We also do not know whether persons to whom liquor was offered were themselves electors. We find in the negative on Issue No. XV(a).

70. Issue No. XV(b).—Banwarilal (P.W. 17) is the Government servant, who, according to the allegations in the petition, went to persuade a liquor contractor to supply liquor. Banwarilal deposed that he did not meet the liquor contractor and there is no other evidence on the point. Our finding on Issue No. XV(b) is in the negative.

71. Issue No. XV(c).—There is no evidence about the distribution of caps. Mattulal (P.W. 23) deposed that some congressmen gave clothes to Sonibai Gondani of Bhuwa Bichhia, Baredi Bhoi of Mundiya Bichhia and Bhaiyalal Gond of Duba and that these three also used to distribute pamphlets on behalf of the Congress. He also deposed that Antu Ahir of Bhuwa Bichhiya had told him that he was being paid Rs. 4 per day and that the man was seen riding a cycle and distributing pamphlets. The admission of Antu Ahir before the witness can be no evidence in this case. Antu Ahir should have been examined as a witness if the fact of payment to him were to be proved. Saraswatiya (P.W. 30) deposed that Babulal had promised to pay workers Rs. 2 per day. It was clearly a remuneration for the work they were asked to do. Fatnu (P.W. 31) deposed that he had been promised Rs. 2 per day by Babulal Yadava for the work entrusted to him. He also deposed that Lili Darji and one Koshta of Mandla were paid Rs. 5 for their work in his presence. Gangacharan (P.W. 43) deposed that Babulal Yadava had employed him on a promise to pay Rs. 50 for going round the villages distributing pamphlets and keeping whatever things were received from Mandla in his custody at Pondi. All these payments were made to workers and not to electors for securing their votes. Our finding on issue No. XV(c) is, therefore, in the negative.

72. *Issue No. XVI(a).*—There is no evidence regarding the Prime Minister's asking Shri Mangru Wikey to induce respondents 3 and 4 to withdraw in favour of the first respondent. Our finding on this issue is, therefore, in the negative.

73. *Issue No. XVI(b).*—Shri Mangru Wikey addressed many meetings and according to the evidence of Vishwanath Prasad Bajpai (P.W. 16), Ganesh Prasad Naik (P.W. 20), Gulabchand Gupta (P.W. 21) and Tulsiram Sakha (P.W. 25), Shri Mangru Wikey in his speeches at the villages Chirai Dongri, Nainpur, Dithori and Kanna had asked the electors to vote for the Congress nominee as, according to him, Congress could help them to establish Gond Raj.

74. By establishing Gond Raj probably meant, 'the Gonds being given an opportunity to play a prominent part in the administration of this area'. Scheduled Tribes have received special treatment from Government and the remarks of Shri Mangru referred to the policy of the Congress Government in affording opportunities to the Gonds in associating themselves with the administration of this area. It could not be said that his speech contained any offer or promise of gratification. It could not amount to a corrupt practice.

75. *Issue No. XVI(c).*—There is no evidence to show that Mangru Wikey had told electors that any facilities granted to them would be withdrawn if they did not vote for the first respondent. The second part of Issue No. XVI(c), is therefore, not proved. As regards the first part there is evidence of Shri Vishwanath Prasad Bajpai (P.W. 16), Fatnu (P.W. 31) and Bhaiyalal (P.W. 40). Each of these witnesses speaks about meetings held at different places and there is nothing to corroborate their evidence. Shri Bajpai speaks about Chirai Dongri meeting which is alleged to have been addressed by Mangru Wikey. Mangru Wikey, according to him, said to the people "you swear by Badadeo that you would vote for the congress". But there is nothing to show that such an oath was actually taken by any of the electors present at the meeting. If the meaning of what he said was that Badadeo would curse the electors if they did not vote for the congress candidate that may amount to attempt to induce electors to believe that they will be rendered an object of divine displeasure if they did not vote for the congress and that would amount to a corrupt practice of undue influence. Shri Vishwanath Prasad Bajpai (P.W. 16)'s evidence is based on his memory, and we doubt if at this distance of time he could remember the exact words which Mangru had said. We think it unsafe to act upon the uncorroborated testimony of this witness.

76. Fatnu (P.W. 31) deposed that Mangru had asked the Gond electors to vote for the congress candidate if they believed in Badadeo. This evidence also is not corroborated. But what Mangru Wikey is alleged to have said would not amount to undue influence. It is also clear from his evidence that the electors had replied that "they would vote as they thought fit". This would show that Mangru's appeal had no effect on them. However, it is not the effect that makes the act "undue influence", because even an attempt to interfere within the meaning of that term would amount to undue influence. What Mangru said, however, could not amount to "induce or attempt to induce the electors to believe that they would become an object of divine displeasure or spiritual censure".

77. Bhaiyalal (P.W. 40) deposed that at the village Ghugri Shri Mangru Wikey asked the Gonds including one Guthali to take a vow to vote for the congress candidate and that those Gonds including Guthali (R1W17) were given liquor to drink. Guthali (R1W17) denied that he ever took oath or was offered liquor. The evidence of Bhaiyalal (P.W. 40), is thus contradicted by Guthali (R1 W17) and there is also no corroboration of it. The alleged oath and the liquor were administered publicly. If so, adequate corroboration could have been available. In our opinion, therefore, the petitioner has failed to prove that Mangru Wikey exercised undue influence.

78. *Issues Nos. XVI(d) and (f).*—We have already discussed above the evidence regarding the alleged administration of oath by Badadeo. There is no good evidence about the alleged threat of excommunication or divine displeasure. There is no good evidence about a statement made by Wikey about the imposition of school tax by the respondent 2. There is not an iota of evidence to show that such a statement, if it was made at all, was a false statement.

79. *Issue No. XVI(e).*—There is evidence to show that one Sonulal, who is known as lieutenant of Mangru, had said in a public meeting "we shall prepare Soup out of the brains of Shri D. P. Mishra". (Shankarlal P.W. 18). It is in evidence that he was pulled up by Pandit Ravi Shankar Shukla who was present at that meeting. Respondent 1's evidence shows that he attended every meeting that was addressed by Pandit Ravi Shankar Shukla or the other Ministers, and he must have been present at this meeting. There is nothing to show that Sonulal did this with the connivance of respondent No. 1 and the very fact that he was pulled up by Pandit Ravi Shankar Shukla, the leader of the party which had

adopted respondent 1 as their candidate, would clearly show that there was no connivance on the part of the candidate, the respondent No. 1. Moreover, it appears to us quite probable that the words were not meant to be construed literally, and that was a figurative language used by the speaker to convey that they would give a crushing defeat to the respondent 2. But even construed literally, the respondent 1 would not be held guilty of corrupt practice as it cannot be said that there was any connivance on the part of the respondent 1. We find accordingly on issue XVI(e).

80. *Issue No. XVII.*—The evidence of Shri Chopda (P.W. 55) shows that two men were treated by him for minor injuries on the night of the meeting at Nainpur. Shri T. K. Bhaduri (P.W. 41) deposed that some one distributing leaflets on behalf of the Socialists was manhandled. It appears there was some quarrel between some one and the man distributing pamphlets supporting the respondent 2. There is not an iota of evidence to show that the men, who assaulted the man distributing pamphlets, did so with the connivance of the candidate or his agent. It is not shown that the person who assaulted was an agent of the respondent 1, nor can it be said that the assault was with the connivance of the respondent 1 or his agent. It is impossible, therefore, to hold the respondent 1 guilty of the corrupt practice of undue influence.

81. *Issue No. XVIII.*—Shri Vishwanath Prasad Bajpai (P.W. 16) and Gulabchand Gupta (P.W. 21) deposed that Shri Govinddas had said that the second respondent who was the former Home Member of the Madhya Pradesh Government, was responsible for the corruption and inefficiency in the administration. Shri Govind Das (P.W. 26) deposed that he had said that if the Congress Government was being accused of corruption and inefficiency, the respondent 2 who was one of the Ministers before, was as much responsible as the other Ministers. It is quite probable that the witnesses Vishwanath Prasad Bajpai and Gulabchand Gupta failed to take notice of the qualifying words. Moreover, the statement would not amount to a statement of fact in relation to the personal character and conduct of the respondent 2 as it related to his conduct as a Home Member. It also has not been proved to be false as the petitioner never cared to examine respondent 2.

82. *Issue No. XIX.*—The evidence of Shri Vishwanath Prasad Bajpai (P.W. 16) shows that Shri Agnibhoj told the audience that Shri D. P. Mishra was responsible for the loss suffered by the Government in Ncpa Mills affair. This again was not a statement in relation to the personal conduct of Shri D. P. Mishra, the respondent 2. The statement also has not been proved to be false.

83. *Issue No. XX.*—Ex. P-90 clearly proves that it was a pamphlet issued by these who supported the candidature of respondent 1. In that pamphlet Shri D. P. Mishra has been accused of falsely obtaining signatures of some Congress workers or sympathisers and publishing the fact of their having signed the pamphlet without their consent. To bring a case within the mischief of sub-section (5) of section 123 of the Representation of the People Act, 1951, it has not simply to be shown that a candidate or his agent, or any other person with the connivance of the candidate or his agent, published any statement of fact but it has also to be shown that that statement was a false one and also that the person making it believed it to be false or did not believe it to be true. This has not been shown in respect of the alleged false statements referred to in Issues Nos. XVIII, XIX and XX.

84. *Issue No. XXI.*—Shri Vishwanath Prasad Bajpai (P.W. 16) deposed that Shri Brijlal Biyani said in his speech that Shri Jawaharlal Nehru was "Mulka-ka-Badshah" and that it was the duty of the people, therefore, to obey his orders and vote for the Congress. He does not say that Shri Brijlal Biyani had told the people that the victory of the second respondent would be loss of honour to Shri Jawaharlal Nehru. There is no evidence to show that any person made such a statement. Our finding on Issue No. XXI is, therefore, in the negative.

85. *Issue No. XXII.*—There is no evidence on this point and our finding on this issue is, therefore, in the negative.

86. *Issue No. XXIII.*—Budhaj (P.W. 15) is the only witness who speaks about providing of a conveyance to an elector to take him to the polling station. He deposed that he did not know if at the polling station there were any policemen or Babulog or Sahab. This would clearly show that his statement 'that he was taken to the polling station by respondent 1's men' is not true. We find in the negative on Issue No. XXIII.

87. *Issue No. XXIV(a) and (b).*—The evidence of Mahant Laxminarayan Das (P.W. 33) disproves the allegations on which the first part of this issue is founded. We find in the negative on Issue No. XXIV(a).

88. The evidence of Shri Vishwanath Prasad Bajpai (P.W. 16) is not consistent with the evidence of Tulsiram Sakha (P.W. 25), and Mahant Laxminarayan Das (P.W. 33) denied that he ever compared the respondent 2 with RAVANA or Shri Jawaharlal with RAMA. There is no good evidence to show that any one had said at the meeting that respondent 2 should be defeated because he was "RAVANA". We find in the negative on Issue No. XXIV(b).

89. *Issue No. XXV(a).*—The evidence of Ganesh Prasad Naik (P.W. 20) and Rewa Prasad Dixit (P.W. 29) shows that the national anthem was sung in the beginning of the meeting addressed by Pandit Ravi Shankar Shukla. Under section 124(5) of the Representation of the People Act, 1951, the use of, or appeal to, religious and national symbols, such as, the national flag and the national emblem, for the furtherance of the prospects of a candidate's election, would amount to minor corrupt practice. The provision of law does not refer to national anthem. A national anthem is not national symbol, nor is a song relating to cow the use of, or appeal to, religious symbols. We find in the affirmative on Issue No. XXV(a) but hold that it does not amount to a minor corrupt practice.

90. *Issue No. XXV(b).*—Shankarlal Tiwari (P.W. 28) deposed that at Tatri in a building in which a liquor shop was situate was exhibited the poster Ex. P-46. According to him, the office of Shri Surendralal Jha, the respondent 1, was also located in a part of the same building. The evidence of Excise Sub-Inspector Balkrishna (R1W9) and of the liquor contractor Mahendralal (R1W15) shows that at the time of the election the liquor shop had been shifted to another place where a hut had been constructed. Thus at the time the poster was exhibited there was, it appears, no liquor shop in the building.

91. The exhibition of the poster Ex. P146 by itself would neither amount to corrupt practice nor to illegal practice. The using of any building, room or other place where intoxicating liquor is sold to the public as a committee room or for the purpose of any meeting to which electors are admitted, is illegal practice under sub-section (2) of section 125 of the Representation of the People Act, 1951. It appears that what would amount to an illegal practice is "the hiring, using or letting, as a committee room or for the purpose of any meeting to which electors are admitted, of any building, room or other place where intoxicating liquor is sold to the public" and not hiring using or letting as a committee room or for the purpose of any meeting to which electors are admitted, of "a distinct and separate part of a building, in another separate part of which liquor is sold to the public". It would appear thus that hiring, using or letting of such place only as is also used for the sale of liquor amounts to illegal practice. It is, however, needless to consider this point also, in view of our finding that there was no liquor shop in the building in which respondent 1's election office was alleged to have been located at Tatri.

92. About the treating of electors with liquor there is, as already discussed above, no satisfactory or convincing evidence, and we, therefore, find on Issue No. XXV(b) in the negative.

93. *Issue Nos. XXVI, XXVII, XXVIII and XXIX.*—Tulsiram Sakha (P.W. 25) and Gulabchand Gupta (P.W. 21) depose that Barelal Kurmi, Shri Kashi Prasad Pandey and one Ahmad Seth were seen talking with persons of their caste and staying with them. This evidence does not prove that they appealed to persons of their caste to vote or refrain from voting on grounds of caste or community. Our findings on these issues are, therefore, in the negative.

94. *Issue No. XXX.*—According to rule 118 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, a candidate or his election agent is authorised to employ for payment in connection with his election only persons specified in Schedule VI of the Rules. He cannot employ any person other than or in addition to those specified in Schedule VI. The list of persons who may be employed for payment by a candidate or his election agent is given in Schedule VI. It is as follows:—

"At all elections—

- (1) one election agent,
- (2) one counting agent, and
- (3) one clerk and one messenger."

This number "one clerk and one messenger" is sanctioned for every seventy five thousand electors on the electoral roll of a constituency. At elections in which the method of voting by ballot boxes is followed, in addition to the persons mentioned

above the rule allows 'one polling agent and two relief agents for each polling station or where a polling station has more than one polling booth, for each polling booth or for the place fixed under sub-section (1) of section 29 for the poll and; one messenger at each polling station or where a polling station has more than one polling booth, at each such polling booth, or at the place fixed under sub-section (1) of section 29 for the poll'. Thus the law permits one messenger for every seventy five thousand electors in a constituency and one messenger for each polling station or where a polling station has more than one polling booth for each polling booth.

95. The number of messengers employed by the respondent 1 was 11 as appears from his return of election expenses. It would, however, appear from rule 118 read with Schedule VI that the law in India as in England does not permit of employment of paid canvassers. The so-called messengers were really canvassers. Neither respondent 1 nor his election agent is prepared to accept the responsibility for employing these 11 canvassers who are called messengers. The election agent Shri S. K. Jha (P.W. 11) deposed (Paragraph 13) that he had nothing to do with the appointment of messengers. The respondent 1 in his deposition stated that he had not appointed Babulal Yadav, Gaya Prasad Yadav or any of the other 11 workers. The respondent 1's deposition would show that he was very anxious to avoid responsibility for the appointment of the so-called messengers or for the payment of remuneration to them or to the other workers. He deposed:—

"I paid no remuneration to any of my workers. I did not send a single person to work for me in the constituency. I have not paid a single worker a single pie with my own hand. I had no contact with any of the 11 workers mentioned on page 5 of the return of election expenses..... Even where the receipts are in my name, the payments were not made by me but were made by Jugolkishore who obtained the receipts in my name. I admit that payments were made to these 11 persons for propaganda work and they are mentioned in the return of election expenses as messengers..... The amounts paid to the 11 persons included also the amounts paid by them to others by way of remuneration, travelling expenses and boarding and lodging expenses of all others engaged by them for propaganda work. I do not know if any definite area had been allotted to the different workers."

96. There is no doubt that the rules (rule 118 read with Schedule VI) permit employment of one messenger for each polling station and where there are more than one polling booth, for each such polling booth. If one messenger is permitted to be employed for each polling booth it would mean that the work of the messenger would be confined to the area of the polling booth and he would not be entitled to work outside the place for which he was appointed. "Messenger" for a polling station like a polling agent should really be appointed a few days before the polling day. It does not appear to us that canvassing would be within the scope of the duties of a messenger. "Messenger" means "one who carries an errand, or a forerunner" (Wharton's Law of Lexicon). Parker in his "Election Agent and Returning Officer" has made mention of duties of a messenger and that can give an idea of what a messenger is really meant for. The learned Author observes:—

"A mere card messenger from a polling station to a committee room is not an agent; nor is a messenger sent round to know how the electors in the district mean to give their votes, a person whose influence is not relied on, and who is sent rather for information than with a view to his exercising any influence, either personal or by persuasion, upon the voters. So, also a person employed merely to take cabs to voters, and having no authority to influence them at all, is not an agent. And a messenger sent by one of a body of volunteers is not an agent of the candidate; but a messenger appointed and paid by the election agent is, of course, an agent."

As regards canvassing by the election staff the same learned Author observed:—

"It has been held that there was nothing to prevent the paid election agent, sub-agent, clerk or messenger, from undertaking such a canvass as he has leisure for and as is not incompatible with his other duties. But a person must with, under colour of being employed to perform the duties of clerk, messenger, etc., be employed to canvass. In view of the fact that the legislature has, while removing all restrictions on the payment of all assistants other than canvassers and has singled out canvassers as the only assistants who must not be paid, it is very doubtful whether these authorities can still be relied on. It is suggested that a candidate would be well advised not to allow any paid election agent or any paid assistant to take part in a canvass."

97. It would thus appear that no candidate would be at liberty to use under the cloak of a messenger a paid canvasser. There can be little doubt that all these 11 persons were really employed to work as canvassers. Gayaprasad Yadava (P.W. 51) deposed that he worked without remuneration. He was paid Rs. 200 for doing the canvassing work and also getting the work done through other workers. According to him, Rs. 200 were meant for his and other workers' boarding, lodging and travelling expenses. The return of election expenses submitted by the candidate and supported by his affidavit, however, shows that the amount was paid to him by way of his remuneration. Gayaprasad (P.W. 51) denied that he was Surendra Lal Jha's messenger but contended that he was a congress messenger. Babulal Yadava (R.1 W-8), who was another out of the list of 11 messengers, deposed that he had spend Rs. 300 for arranging meetings, for feeding the workers and for the transport of workers and that this amount was paid to him on behalf of the respondent 1 by Shri Chaturvedi. He also deposed that he was not to get any remuneration. The return, however, shows that he was paid remuneration. He was to look after the work of canvassing round about the Pondi area while his brother Gayaprasad Yadava was to work in the Ghugri area. The type of work he was doing is apparent from his deposition wherein he says:—

"I had three or four workers and they worked in about 15 villages. They used to call meetings and ask the electors to vote for the Congress. The meetings convened by them used to be addressed by me."

98. It is pertinent to remember the occasions on which these meetings were held. They were held during the days of by-election because Congress was supporting the candidature of respondent 1. Thus, though at the meetings the workers may have asked the electors to vote for the Congress, it was, in essence, a part of the election campaign connected with the by-election from the Nainpur-Mohagaon Constituency and all the meetings must be held to have been convened for supporting the candidature of respondent 1. All these 11 so-called messengers were really paid canvassers employed by respondent 1. It is clear from the evidence of the witnesses Babulal Yadava and Gayaprasad Yadava that the money was paid to them by respondent 1 for the work of canvassing, and it is not possible for us to believe that respondent 1 had not appointed them (the 11 messengers) or that he did not know what work they had been doing when for their work payment was actually made by him.

99. The messengers appointed for a polling station have to confine themselves to the area of the polling station. Ghugri polling station had only 3 villages within its jurisdiction but he worked in 15 villages and not only in 3 villages. Similarly another so-called messenger Durgaprasad Dikshit worked in the area covering three polling stations—Tatri, Bada Chhapri and Dungaria (*vide* receipt No. 32 attached to the return of election expenses). It is thus clear that the "messengers" did not confine their canvassing to the polling station area. They were thus not working as messengers but as canvassers.

100. Under rule 118 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, it is not permissible to employ paid canvassers and such an employment would be contravention of rule 118 of the said Rules and would amount to corrupt practice under section 123(7) of the Representation of the People Act, 1951. We do not believe the evidence of Babulal Yadava and Gayaprasad Yadava that they worked without remuneration when the return of election expenses mentions the remuneration paid to them for the number of days they had been employed. In *Ghasiram V. Ramsingh* (Gazette of India Extraordinary, February 21, 1953, page 477), where employment of a single person as a paid canvasser was proved, the candidate was held guilty of major corrupt practice under section 123(7) and his election was set aside.

101. *Issue No. XXXI*.—Shri S. K. Shastri (P.W.-11), the election agent of the first respondent, signed forms of appointment of polling agents, Exhs. P-21 and P-22. One of the forms was handed over to the Returning Officer and the other to the polling agent. These forms are signed by the polling agents. The form Exh. P-22 was presented by the polling agent and signed by him in presence of the Presiding Officer. The signature on Exhs. P-21 and P-22 ought to be of the person who was appointed agent and who presented one of the forms to the Presiding Officer. But it is clear from the evidence of Kamal (R.1 W-4) that the signatures marked D-1 and D-2 on Exh. P-21 or B and C on Exh. P-22 are not his signatures. He only deposed that the signature A on Ex. P-22 was his signature; and the similarity in his signature A on Ex. P-22 and the signatures he made before the Tribunal as also the evidence of the Handwriting Expert Shri M. B. Dixit (R1W20) clearly show that the signature at A on Ex. P-22 was made by Kamal (R1W4) while none of the other signatures on Ex. P121 and P-22 is

Kamal R1 W4's signature. In Ex. P-21, while the form mentions the name "Kamalsingh", the signatures are of Kamalsingh. The signatures B and C on Ex. P-22 are "Kamalsingh". Kamalsingh (P.W. 36), who is supposed to have signed Ex. P-21 and P-22, was examined before us as a witness and he deposed with much hesitation that he had signed Exs. P-21 and P-22 in token of his having accepted the appointment of a polling agent but that he did not go to Patpara to work as polling agent there. Shri M. B. Dixit (R1W20) deposes that, in his opinion, the signatures in Exs. P-21 and P-22 were not those of Kamalsingh (P.W. 36) whose signatures had been taken before the Tribunal for the purpose of comparison. It appears the person who has put his signatures on Exs. P-21 and P-22 at D1, D2, B and C was neither Kamalsingh (P.W. 36) nor Kamal (R1W4) but some other person. Thus this was a case of false personation. Kamal (R1W4) personated the man who had really been appointed a polling agent by the election agent of the first respondent. The form Ex. P-22 must have been delivered to Kamalsingh to make his signatures at B and C on that form; it is a mystery how that form passed from that Kamalsingh to Kamal (R1W4). The election agent had appointed Kamalsingh who signed the form but sent another person to act as polling agent and he would be responsible for this false personation; no action can, however, be taken against the election agent because false personation as a polling agent is not an election offence.

102. Kamalsingh (P.W. 36) deposed that he was a Patel and he worked as a polling agent at Kawwa Dongri. There is no evidence to show that he was appointed polling agent at Kawwa Dongri; and as the signatures on Exs. P-21 and P-22 do not appear to be the signatures of this Kamalsingh (P.W. 36) it is impossible to hold that he was appointed polling agent at all by respondent 1 or his election agent. There is no evidence to show that the person who signed Ex. P-21 and P-22 was a Patel.

103. The other person alleged to have been appointed a polling agent was Istekhar Ali. The order Ex. P-37 and the entry in the register of Mukaddams Ex. P-35 show that Istekhar Ali had been appointed a Patel and Mukaddam of the village Harrabhata. But there is no evidence to show that Ex. P-20 bears the signature of Istekhar Ali Patel of Harrabhata. It is not known who this Istekhar Ali signing the Ex. P-20 was. No person of this name was summoned as a witness. In fact, what is mentioned in the pleadings is that one Istiaqali was a Patel of Harrabhata and worked as a polling agent of the respondent 1. The name of the person to be summoned given in the application for the issue of the summons was also Istiaqali and not Istekhar Ali. Thus Istekhar Ali who is alleged to have signed the Ex. P-20 was not summoned and there is no evidence to show that this Istekhar Ali who has signed Ex. P-20 was a Patel. Our findings on both parts of Issue No. XXXI are, therefore, in the negative.

104. Issue No. XXXII(a) and (b).—A ballot box of the type used in the bye-election was sent for from the office of the Deputy Commissioner Mandla and Shri Haridas Awle, a pleader here, who had been summoned by the Petitioner to give a demonstration of opening the box without breaking the seal, was asked to show how the ballot box could be opened without opening the seal. It was found that the outer seal breaks very easily and the outer lid can be opened. But there are left marks showing that the seal has been broken and the lid has been opened. The inner lid can be opened without breaking the seal; but for opening the lid the thread has to be cut. Without cutting the thread it is not possible to open the box if the seals are not broken. We, therefore, hold that it is not possible to tamper with ballot boxes without leaving visible marks showing tampering.

105. The Deputy Commissioner Shri Pagey (P.W. 32) and the Election Officer Shri R. B. L. Gumastha (P.W. 5) have been examined as witnesses in this case. Their evidence shows that ballot boxes were always in proper custody. There appears no truth in the plea that ballot boxes had been left to the care of peons only and were carried by them two days after the polling. Our finding on the second part of issue No. XXXII(b) is in the negative, and as regards its first part we hold that the ballot boxes were always in proper custody.

106. Issue No. XXXII(c), (d) and (e).—There is no evidence to show that any votes were found invalid. The question involved in Issue No. XXXII(c), therefore, does not arise for decision. There is no evidence on issue No. XXXII(d). We find in the negative on that issue. We also find in the negative on both parts of Issue No. XXXII(e).

107. Issue No. XXXIII.—The first respondent as R1 W13 deposed that he had no concern with the expenses incurred by the Provincial Congress Committee. The expenses incurred by the District Congress Committee have also not been included:

by the respondent 1 in his return of election expenses. Shri Govind Das (P.W. 26) deposed that the Provincial Congress Committee had spent money during the by-election. Shri Shyam Sundar Mushran (P.W. 58), the Secretary of the Provincial Congress Committee, says that he used to direct the congress workers there. At Mandla itself there was a Chunav Samiti which issued the pamphlet Ex. P-47 and the cost of printing this pamphlet Ex. P-47 is shown by respondent 1 in the return of election expenses as cost incurred by him. Chaitram (R3W1) was the President of the Chunav Samiti and Umadhar Jha (P.W. 22) its Secretary. They tried to show that this Chunav Samiti did not function. But the letter Ex. P-59 sent to it by the Secretary of the Mahakoshal Provincial Congress Committee shows that on 16th December 1952 the Chunav Samiti had received instructions to make arrangements for the tour of two Ministers (Shri Shankarlal Tiwari and Shri Kannamwar) for the election campaign. These two State Ministers and three others, viz., Shri D. K. Mehta, Shri Brijlal Biyani and Shri Dindayal Gupta, as prominent members of the Congress Party in the Legislative Assembly, took part in the election campaign. Shri Ravi Shankar Shukla (P.W. 60), the Leader of the Congress Party in the Legislative Party, deposed that he also took part in the election campaign as the All India Congress Committee had asked him to help in the election. The Mahakoshal Provincial Congress Committee was a branch of the Indian National Congress and the District Congress Committees at Seoni, Balaghat, Jabalpur and Mandla were subordinate to the Mahakoshal Provincial Congress Committee. The expenses incurred by all these bodies and persons are admittedly not shown in the return of election expenses given by the first respondent. We have considered below the question where the respondent 1 was bound to show these expenses in his "return" and, if he was, what is the effect of his failure to include them in the return.

108. *Issue No. XXXIII (a) (i).*—Shri Shankar Lal Tiwari (P.W. 28) deposed that he took a jeep car to the Constituency, and some more cars were sent from Balaghat. Shri D. K. Mehtra (P.W. 44) deposed that he had sent cars belonging to some mine owners. The evidence of Pandit Ravi Shankar Shukla (P.W. 60) shows that two cars had been sent from Sagar. The six Ministers and some members of the Legislative Assembly went in their own cars for the election propaganda. Admittedly, the price of petrol used in the cars has not been included in the return of election expenses, for respondent 1 only included the price of petrol used in the cars which he himself had used during the by-election.

109. *Issue No. XXXIII (a) (ii).*—Shri Anand Mangal Mishra (P.W. 34) had sent two cars from Sagar, one of them probably a jeep car to Mandla for election propaganda. Respondent 1 as R.1W.13 in paragraph 26 of his deposition has mentioned some cars, and the two cars are not in the list. The return of Election Expenses is not thus correct as it does not contain the expenditure regarding the price of petrol used in the cars sent from Sagar, Balaghat and other places.

110. *Issue No. XXXIII (a) (iv).*—Shri R. B. L. Gumastha (P.W. 5) has deposed that his father sold his car to the wife of the first respondent for Rs. 3,000. It is apparent from respondent 1's evidence that, that car was used by him during his election. It was argued on his behalf that, since the car had been purchased before the election, and even before respondent 1's nomination, it could not be said that it had been purchased for purposes of election, and that it was not necessary to include the price of the car in the return of election expenses. It was admitted that the price of the car had not been included in the return of election expenses. The car belonged to respondent 1's wife to whom he had not to pay any rent. The return of the election expenses cannot be considered to be false because the price or hire for the car has not been included in it.

111. *Issue No. XXXIII (a) (v).*—The first respondent admittedly did not include in the return expenses which were incurred by persons who worked under the instructions of the Congress Committee or under the instructions of Congress Party in the Madhya Pradesh Legislative Assembly. The return of election expenses, is, therefore, incorrect on this ground also.

112. *Issue No. XXXIII (a) (vi).*—The expenses incurred by the Ministers in their tours during the election for the election work have not been included in the return. The return is incorrect in this respect also.

113. *Issue No. XXXIII (a) (vii).*—The cost of printing and publication of the pamphlets regarding Chari and Nistar (Ex. P.-58) have been included in the return. On this ground the return of election expenses cannot be regarded as false.

114. *Issue No. XXXIII (a) (viii).*—Murlī Mistri (P.W. 10) and Ravi Shankar (P.W. 13) of the Bengal House have deposed that they received what has been shown in the return. The return is not false on this ground.

115 *Issue No XXXIII(a) (ix)*—No cyclostyled bulletins have been produced before us. It is not known if any cyclostyled bulletin were issued by Mandla Congress Committee. In the absence of evidence, therefore we are bound to hold that no cyclostyled bulletins were issued and the question of inclusion of the cost of such bulletins in the return of election expenses does not, therefore, arise.

116 *Issue No XXXIII(a) (x)*—There is no evidence about the cost of correspondence involved in this issue. That any telegrams were issued or telephone calls were booked in connection with the election campaign has not been proved. The return cannot be held to be false because of the non-inclusion of any cost on this account.

117 *Issue No XXXIII(a) (xi)*—Saraswatiya (PW 30) says that Babulal a Congress worker had agreed to pay her some rent for the house at Linga Pondi. Babulal (PW 8) deposed that the account had been settled and that no payment was to be made as rent for the house, because Saraswatiya was to be paid for the food that she had supplied to the Congress workers. The evidence of Saraswatiya (PW 30), who appears to be exaggerating her claim, does not appear to us reliable and we are not prepared to hold that any rent had been agreed to be paid for the portion of the house which was in the occupation of the respondent 1's workers. The non-inclusion of the rent for any of the houses referred to in issue No XXXIII(a)(xi) cannot, therefore, make the statement a false statement of election expenses.

118 *Issue No XXXIII(a) (xii)*—It has already been said above that the respondent 1 has not shown in the return the expenses incurred by the Mahakoshal Provincial Congress Committee or the District Congress Committees or other persons who visited the constituency, for purchase of petrol or mobil oil. Some petrol for some of these cars may have been purchased at Mandla where the election agent of the respondent 1 paid Rs 4,422/4/3 to the firm "Jainarayan Surajmal" who supplied petrol. Many of the cars had come from outside and the petrol used for bringing the cars to the constituency had been purchased by the owners of the cars themselves. Some petrol may have been left in the cars after covering the journey up to the constituency in connection with the election campaign. The price of even this portion is not included in the return which, therefore, must be held to be incorrect.

119 *Issue No XXXIII(a) (xiii)*—Among the disputed claims, according to the petitioner, is the claim of Messrs Kewalram Prabhudas who brought a suit for Rs 441 against the first respondent and Vijay Kumar Kaushal (PW 6). This amount included the price of a cycle which was lost and hire of the same cycle. The cause of the dispute was not the hire of the cycle but the price of the cycle. The cycle lost could not be an item of expenditure. The evidence of Shri Vijay Kumar Kaushal (PW 6) shows that as many as 10 cycles had been sent from Seoni to Nainpur for the use of workers who worked on behalf of the respondent 1 for promotion of his election. His evidence and Exs P-26, 27, 28, 29, 30, 31, 32 and 33 clearly show that at least the cycle that was missing had been hired in connection with the election of the respondent 1. It would appear from Ex P-26 that respondent 1 did not dispute the claim for the price of the cycle. Ex P-27 contains an admission of respondent 1's liability to pay and Ex P-28 contains a promise to pay the amount after the pay bill had been cashed. Ex P-29 expresses surprise at Moolchand's inability to pay the amount in spite of respondent 1's direction to pay it. It is implied in the letter that Moolchand had enough money to pay. Surprise is, therefore expressed about Moolchand's refusal to pay on the ground of his inability.

120 The respondent 1 deposed that he did not know if any cycles had been sent for from Seoni. We are not prepared to believe respondent 1 when he says that he did not know of the existence of the Chunav Prachar Samiti, which had been formed to support his candidature. The payment of the price of publication of the pamphlet Ex P-47 and its inclusion in the return of election expenses would show that respondent 1 must have known about the Chunav Prachar Samiti. The pamphlet mentions Moolchand Agarwal as the treasurer (KOSHADHYAKSHA of the CHUNAV PRACHAR SAMITI). Respondent 1 in the witness-box pretended that he did not know if Moolchand was a treasurer of the Chunav Prachar Samiti. He also tried to suppress the fact that some amount which was to be spent in connection with his election had been in deposit with Moolchand Agarwal. When he was confronted with his letter Ex P-114 he had to admit that some money was due to him from Moolchand Agarwal. We are not prepared to disbelieve the evidence of Vijay Kumar Kaushal about his sending 10 cycles to Nainpur for the use of respondent 1's workers.

121. It is clear from the evidence on record that Moolchand Agarwal was one of the prominent congress workers of Nainpur and some of the Ministers, who visited Nainpur in connection with respondent 1's election, were entertained by him. Respondent 1 who was present at the time of the Ministers' visit to Nainpur must have known it. He must also have known that Moolchand Agarwal had been spending money in organizing the election campaign in Nainpur area. It would appear from this that respondent 1 had authorised Moolchand Agarwal to incur the expenses. It would appear from respondent 1's denial of the existence of the Chunav Prachar Samiti that he was anxious to avoid an admission that the expenses incurred by the Chunav Prachar Samiti and its office bearers like the treasurer Moolchand, were expenses incurred in connection with respondent 1's election. They were expenses incurred in sending out persons to canvass votes for the respondent 1 and were, therefore, expenses incurred in the conduct and management of respondent 1's election. Respondent 1 was bound to include these expenses in his return but he failed to do so. We are not convinced about the truth of Saraswatiya's claim. We do not believe her and we are not prepared to believe that any amount was due to her. We are also not convinced about the claim of Gangacharan (P.W. 43) who never made any claim to respondent No. 1 or took any steps to recover the amount from him. We are not, therefore, satisfied that there is any disputed claim in this case, of that the statement is false because no such claim has been included. We, however, believe the evidence of Vijay Kumar Kaushal (P.W. 6) and we are clearly of opinion that the respondent 1 failed to include in his return of election expenses, the amounts spent by the Chunav Prachar Samiti at Nainpur.

122. Before we proceed to consider the remaining issues we shall have to consider whether all those who incurred expenses in connection with the respondent 1's election were authorized to incur them and whether respondent 1 was bound to include such expenses in the return of election expenses. It would appear from section 125 of the Representation of the People Act that only the candidate, his agent and any other person authorized in writing by the candidate can incur or authorize expenses in connection with the election of such candidate. If any other person does it, it would be "illegal practice". But an exception has been made in the case of an institution or association which supports a candidate. Explanation under clause (1) of section 125 lays down that expenses incurred or authorized by such an association shall not be deemed to be expenses incurred or authorized within the meaning of that clause (i.e. clause (1) of section 125).

123. Our attention was drawn to the evidence of Mahant Laxmi Narayandas who deposed that he spent his own money on the propaganda tour. Several persons did this work of canvassing as volunteers and spent their own money. Similarly many prominent members of the congress party also travelled through the constituency at their own cost during the election campaign. But almost all except the volunteers volunteered their services on behalf of the institution, the Indian National Congress. Shri Mandlekar argued that this was illegal practice on the part of the Congressmen. We do not accept the argument as they could as well have donated to the institution the sums spent by them and obtained back the same for expenses over the propaganda tour.

124. Was it necessary to include these expenses incurred by the Congress Committees (All India, Provincial or District) in the return of election expenses? Under rule 112(2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, every return of election expenses must be in Form 26 and must contain the particulars specified in paragraphs 1 and 2 of Schedule IV and must also be accompanied by the declarations referred to in sub-section (2) of section 76. Paragraphs 1 and 2 of Schedule IV run as follows:

"1. Under the head of receipts there shall be shown the name and description of every person (including the candidate), club, society or association from whom any money, security or equivalent of money was received in respect of expenses incurred on account of, or in connection with, or incidental to, the election, and the amount received from each person, club, society or association separately.

2. Under the head of expenditure there shall be shown:—

- (a) the personal expenditure of the candidate incurred or paid by him or his election agent, including travelling and all other personal expenses incurred in connection with his candidature;
- (b) the name, and the rate and total amount of pay, of each person employed as an agent (including the election agent), clerk or messenger;

- (c) the travelling expenses and any other expenses incurred by the candidate or his election agent on account of agents (including the election agent), clerks or messengers,
- (d) the travelling expenses of persons, whether in receipt of salary or not incurred, in connection with the candidature, and whether paid or incurred by the candidate, his election agent or the persons so travelling;
- (e) the cost whether paid or incurred of—
 - (i) printing,
 - (ii) advertising,
 - (iii) stationery,
 - (iv) postage,
 - (v) telegrams, and
 - (vi) any room hired either for a public meeting or as an office.
- (f) any other miscellaneous expenses whether paid or incurred.

NOTE—(1) All expenses incurred in connection with the candidature whether paid by the candidate, his election agent or any other person or remaining unpaid on the date of the return are to be set off.

(2) For all items of Rs. 5 and over, unless from the nature of the case (e.g. travel by rail or postage) a receipt is not obtainable, vouchers are to be attached.

(3) All sums paid but for which no receipt is attached are to be set out in detail with dates of payment.

(4) All sums unpaid are to be set out in a separate list."

125. Schedule IV attached to the Rules framed under the Representation of the People Act, 1951, says that the amount of money or the equivalent of money received from every person, club, society or association has to be shown under the head "receipts" in the return of election expenses, and under the head "expenditure" are to be shown the various items specified in paragraph 2 of Schedule IV. The mandatory provision in rule 112 directing the inclusion of particulars in paragraphs 1 and 2 of Schedule IV would show that expenses incurred by an association, club or society for furthering the prospects of a candidate's election have to be included in the return of his election expenses. Thus while explanation under clause (1) of section 125 excludes the incurring or authorizing of expenses by an institution or an organisation from the definition of illegal practice it does not permit exclusion of these expenses from the return which Schedule IV would show have to be included in it. The failure of a candidate to include it in his return would amount to a breach of rule 112 and a return which does not include these expenses would not be a correct return. If a candidate excludes these expenses wilfully then the return is not simply incorrect but is a false one.

126. We have noted above in paragraph 122 that law permits the candidate, and his agent to incur or authorize expenses in connection with his election. It would be necessary to determine who according to the law of Election is an agent. Under the Election Law, those who are expressly so appointed are not the only agents of a candidate. Barker in his 'Election Agent and Returning Officer' has made the following observations regarding "Election Agency":—

"The doctrines of election agency are much wider than those of common law agency, and evidence which would be quite inadequate to establish agency at common law, has often been held sufficient in election cases to make a candidate responsible for acts committed by other persons."

"Election agency may, like agency at common law, be created either (1) by the express appointment of the agent, or (2) by ratification and adoption."

127. In a later portion discussing the case law the learned Author observed:—

"It is not necessary, in order to prove agency, to show that the person was actually appointed by the candidate; it is sufficient to show the conduct or connection of the parties, the recognition by the candidate of the acts of the person alleged to be an agent, or the absence of any disavowal of such acts. The various acts proved to establish agency may each, taken singly, be insufficient, and yet, taken as a whole, may be held to prove agency conclusively. Where the agency cannot be distinctly proved, it may be inferred or implied from the acts of the candidate, and from other facts and circumstances."

Every instance in which it is shown that either with the knowledge of the candidate or of his appointed agents, a person acts at all in furthering the election for him, or in trying to do so, is some evidence to show that he is an agent; and if a person assumes to act for a candidate, and the latter accepts his services, he makes such person his agent. To establish agency, therefore, it may be unnecessary to show that the election agent himself knew of and accepted services voluntarily tendered; knowledge and acceptance by other persons in control of the election may be sufficient." (Pages 311 and 312)

128. Similarly it is pointed out that a circular urging all persons to aid in securing a certain candidate's return, would make every person the candidate's agent, who acted upon it and took up his interests. It is also pointed out that a candidate accepting a person's services ratifies his acts and adopts and recognises him as an agent. If an association or a society is interested in the success of a candidate, and members of a society or organization canvass for the candidate, such association or society and every member of such association or society would become agent of the candidate. It would appear that this is the basis of the rule embodied in paragraphs 1 and 2 of Schedule IV.

129. *Issue No. XXXIII(b).*—The first respondent was the official candidate of the Mahakoshal Congress Committee which is a branch of the All India Congress Committee. The Congress Party of the Madhya Pradesh Legislative Assembly rendered help in the election campaign under the instructions of the All India Congress Committee. The District branches of the Mahakoshal Congress Committee, such as Balaghat, Seoni, Mandla and Jabalpur Congress Committees, also helped the respondent 1 in his election campaign and all the members and workers of the All India Congress Committee, the Mahakoshal Provincial Congress Committee and the 4 District Congress Committees were, therefore, agents of respondent No. 1 under section 79(a) of the Representation of the People Act, 1951. The expenses incurred by them were, therefore, not unauthorised expenses. We find accordingly on Issue No. XXXIII(b).

130. *Issue No. XXXIII(c).*—This is one of the most important issues in this case. Nainpur-Mohagaon constituency is a double member constituency and the respondent 1 was, therefore, entitled to spend, under Schedule V attached to the Rules framed under the Representation of the People Act, 1951, Rs. 12,000 in the election. The total amount spent by him and mentioned in the return of election expenses is Rs. 9,108. The amount of Rs. 1,000 to 1,200, which is alleged to have been paid to the Mahakoshal Congress Committee by cheque by the leader of the Congress Assembly Party (Pandit Ravi Shankar Shukla), for expenditure in connection with the election campaign in favour of the Congress candidate, the respondent 1, has not been included in the return of election expenses. According to Shri D. K. Mehta (P.W. 44) the cheque was for Rs. 1,000, but Pandit Ravi Shankar Shukla (P.W. 60) said that it was "Rs. 1,000 to Rs. 1,200, but certainly not more than Rs. 1,500". There can be little doubt that the amount was at least Rs. 1,000 and this amount must have been spent by the Mahakoshal Provincial Congress Committee through its Secretaries Shri Shyam Sundar Mushran and Shri L. G. Bhutt.

131. Shri D. K. Mehta (P.W. 44) deposes that he had claimed some Rs. 200 on account of petrol charges as the amount had been spent at Nagpur from the funds of the Congress Party of the Legislative Assembly. Respondent 1 himself admitted that he had received a letter from Shri D. K. Mehta demanding Rs. 331 or thereabout as expenses incurred by him for the purchase of petrol in connection with the by-election. This amount of Rs. 331, as also the sum of Rs. 1,000 alleged to have been paid by cheque, have not been shown in the return of election expenses. If respondent 1 disputes his liability to pay Rs. 331 that should at least have been included among the disputed claims.

132. Shri Mahant Laxminarayan Das (P.W. 33) the Vice-President of the Mahakoshal Congress Committee deposed that he had spent Rs. 1,200 from his own pocket. This amount should have been included in the return of election expenses but that was not done. Seth Govind Das, the President of the Mahakoshal Congress Committee (P.W. 26) toured through the Constituency and addressed election meetings. The Secretary of the Mahakoshal Congress Committee as also many outsiders, prominent amongst whom were Shrimati Tarkeshwari Devi and Shri Mannulal Dwivedi also addressed election meetings. Their expenses must have been paid by the All India Congress Committee or the Mahakoshal Congress Committee. But none of these expenses has been included in the return of election expenses.

133. Respondent 1 in paragraph 14 of his deposition admitted that Shri Mushran had supplied him with workers, some of whom were residents of Mandla. Mangru Wikey has not been examined as a witness. But the respondent 1 admitted that he also took part in the election campaign. It appears, he played a very important part in the election campaign and his help was substantial. Shri Kashiprasad Pandey, Shri Vasantrao Wikey and Shri Kirtimantrao M.L.A's. also visited the Constituency and exhorted the rural population to support the candidature of respondent 1. Shri F. L. Katre (P.W.4), the Secretary of the Balaghat District Congress Committee, deposed that the respondent 1 requested the Chairman of the Balaghat District Congress Committee to send workers to help him in his election campaign and that in compliance with the request 8 to 12 workers from Balaghat had gone and stayed in the Constituency to canvass votes for respondent No. 1. The cost of journey of these 8 or 12 persons and their expenses during the period of their stay in the constituency, i.e. the expenses for boarding, lodging etc. which must have been substantial) have not been included in the return of election expenses.

134. Umadhar Jha (PW 22), the Secretary of the Chunav Prachar Samiti formed to give help to the respondent 1 in his election campaign, deposed that the Chunav Prachar Samiti did practically no work. But Bhagwandas (PW 14) deposed that the Chunav Samiti had its office at Kindri and notices summoning persons to attend election meetings were issued from that office. The office could not have carried on its work without funds and we have no doubt that the respondent 1's failure to include all these expenses was deliberate.

135. Though it is difficult to arrive at the exact amount spent by the workers of respondent 1 there can be little doubt that the amounts spent by them and the Ministers in visiting and touring through the Constituency would be several thousand rupees. We have no doubt that the respondent 1's failure to include the expenses incurred by the All India Congress Committee, the Mahakoshal Provincial Congress Committee and the District Congress Committees and several members of these organisations who visited the Constituency and took part in the election campaign was deliberate. His failure to include cycle hire for 10 cycles sent from Seoni and the expenses incurred by the several car owners who sent their cars in connection with the election and the expenses incurred by the Chunav Prachar Samiti was also deliberate, the object being to evade the consequences of the breach of the rule prescribing the maximum amount.

136. Rule 117 of the rules framed under the Representation of the People Act runs as follows:—

"117. *Maximum election expenses.*—No expense shall be incurred or authorised by a candidate or his election agent on account of or in respect of the conduct and management of an election in any one constituency in a state in excess of the maximum amount specified in respect of that constituency in Schedule V."

Nainpur-Mohagaon Constituency is a double member constituency and Schedule V prescribes Rs. 12,000 as the maximum which a candidate is allowed to spend for election from a double member constituency in Madhya Pradesh. The learned counsel for the respondent 1 argued that what was prohibited was an expenditure exceeding Rs. 12,000 in the conduct and management of the election campaign. He said, money had been spent in this case not in the conduct and management of the election but for other purposes. It would be necessary to find out, therefore, what is precisely meant by "conduct and management" of an election?

137. We could not come across any exact definition of the expression "conduct and management" of an election. It is, however, possible to form an idea about the meaning of the expression and the activities or operations during the several stages of an election which fall within the scope of the expression "conduct and management". We are giving below the extracts from Parker's 'Election Agent and Returning Officers', which, according to us help determine the meaning and the scope of the expression "conduct and management" of an election.

"No expenses shall with a view to promoting the election of a candidate at an election, be incurred by any person other than the candidate, his election agent and persons authorised in writing by the election agent on account:—

- (a) of holding public meetings or organising any public display; or
- (b) of issuing advertisements, circulars or publications; or
- (c) of otherwise presenting to the electors the candidate or his views or the extent or nature of his backing or disparaging another candidate [R.P.A. s. 63(1) (page 309)]."

"It will be seen that the prohibited expenses specified in paragraphs (a), (b) and (c) above cover a wide field and include a number of expenses which are ordinarily incurred by a candidate or his election agent "on account of or in respect of the conduct or management of the election". (Page 310).

"The expression "promoting or procuring the election" of a candidate at any rate in relation to expenses incurred by persons who are not agents, has been said to be wider than the expression "conduct or management" of an election and may be held to include expenses incurred at a time when, and under circumstances in which, the conduct and management of an election could not be said to have begun."

(Page 310; the italicizing is ours).

"Authority for the general management of an election involves authority to canvass; but a mere messenger has no authority to canvass". (Page 315).

138. When can it be said that election has begun?

The answer to this question can be found in the following observation of the learned Author :—

"As a general rule, an election commences, within the meaning of the statute now under consideration, as soon as the candidate begins to take measures to promote his election, as by announcing his intention to present himself as a candidate at the next ensuing election, or by holding meetings to advance his candidature, whether the election is imminent or not..."

139. The definition of "candidate" also enables us to determine when an election can be said to have begun. It appears to us that an election starts and all activities can be said to be connected with an election when a person begins only to hold himself out as a candidate. "Candidate" has been defined as:—

".....a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate." [Sec. 79(b) Representation of the People Act, 1951].

It would mean that a prospective candidate is a candidate and, on the analogy, prospective election is an election. The process of election starts with the prospect of election before the electorate and ends with the announcement of the result of the poll.

140. It appears to us from the extracts from Parker's Treatise on Election Law, that expenses incurred in holding any public meeting or issuing advertisements, circulars or publications or in otherwise presenting to the electors the candidate or the views or the extent or nature of his backing or disparaging another candidate, by the candidate or his election agent or any other person with his connivance, with a view to promote such candidate's election, would be expenses on account of or in respect of the conduct or management of the election. In our opinion, therefore, the expenses incurred after the nomination of the respondent 1, by respondent 1 himself or by his election agent or by other persons (such as the All India Congress Committee, the Mahakoshal Provincial Congress Committee and the District Congress Committees and all other persons who took part in the election campaign, including the Ministers of this State and all other visitors who visited the Constituency to support the candidature of the respondent 1 and to canvass votes on his behalf) were expenses incurred or authorised by the respondent 1 for the "conduct and management" of his election and should have been included in the return of election expenses. We are also of opinion that the respondent 1 deliberately failed to include these expenses in the return of his election expenses for fear that the expenses would exceed the maximum of Rs. 12,000 permitted by Rules. Though, as stated above, we have no material to find out what actually the expenses incurred or authorised were, we are convinced that they would have exceeded Rs. 12,000 because the expenses which have been included in the return of election expenses already exceed Rs. 9,000.

141. Even apart from what we have said above, there is material on record to show that the expenses actually incurred in the conduct and management of his election by respondent 1 must have exceeded Rs. 12,000.

The respondent 1 was summoned to produce his account books but he failed to produce them in compliance with the order of the Tribunal. As soon as the election petition was published in June 1953 the respondent knew that his election had been challenged on the ground of corrupt practice of incurring or authorising expenses exceeding the maximum permitted by Rules. He must have then taken every precaution to secure his account books. If he were a straightforward man he would have produced his account books, even before he was called upon to do so, to show his *bona fides*. He did not do it. The evidence of his witness Shri Trivedi (R1W 16) shows that the respondent 1 had shown the election position to him and had consulted him. They both must have known the importance of the account-books then, and it seems very strange that they both felt unconcerned about those account books, so much so that they want us to believe that they allowed them to be misplaced or lost. The evidence of both the witnesses on the point appears to us to be very untrustworthy.

142. Shri Trivedi Pleader (R1W 16) deposed that respondent 1 did not ask him to return the account books even after he had seen the election petition. Respondent 1 received the summons from the petitioner to produce the account books on 23rd January 1954. He actually appeared before the Tribunal on 8th February 1954 but failed to produce the account books. If the account books had been lost or misplaced in July 1953, as he and Shri Trivedi want us to believe, respondent 1 should have given some indication to the Tribunal about his possible inability in future to produce the account books. He did not do so. But on the contrary he gave an undertaking to produce "whatever documents he had" through his election agent on 10th February 1954. On 10th February 1954 the election agent Shri S. K. Shastri (PW 11), who was examined by the petitioner as his witness, did not produce the account books and we were informed that the account books were not available. Shri S. K. Shastri's evidence would show that when he had last seen the account books they were in the custody of either Jugal Kishor or Shri Surendra Lal Jha (respondent 1) in a part of Shri Surendra Lal Jha's house in which the office of the Mahakoshal Congress Committee had been opened. The story set up later about the account books having been sent to Shri Trivedi Pleader's office, would appear to be an after-thought in view of Sheo Kumar Shastri's evidence that Shri Trivedi pleader prepared the return of expenses from the information available in the office "which was situate in the house of Surendra Lal Jha". If Trivedi had collected all the information from the office, it was not necessary for him or Shri Surendra Lal Jha to remove the account books. The story of the loss of account books clearly appears to be an after-thought and seems to have been invented to avoid production of the account books. The deliberate suppression of the account books clearly leads to an inference that had the account books been produced they would have gone against respondent 1.

143. The respondent 1's own evidence shows that all the amounts which Shri S. K. Shastri had withdrawn from the bank probably on cheques issued by his wife, were obtained for election expenses. There were no private dealings between Shri S. K. Shastri and respondent 1's wife or the respondent 1. It also appears that respondent 1's wife took precautions not to withdraw money in a lump sum but seems to have withdrawn money from time to time as it was required. Thus she withdrew Rs. 4,000 on cheque in favour of her husband on 19th November 1952 and the same amount Rs. 4,000 by another cheque in favour of Shri S. K. Shastri (who is also known as Shri S. K. Jha). She also paid by cheque to Shri Shastri Rs. 2,000 on 26th December 1952 and Rs. 1,000 on 28th December 1952. But all these sums (Rs. 4,000, 2,000 and 1,000) paid to Shri Shastri have not been shown in the 'receipts' in the Form of return of election expenses. Under the 'receipts' the respondent has credited Rs. 4,000 obtained by him from his wife, Rs. 4,000 obtained from his four daughters (Rs. 1,000 from each daughter) and Rs. 1,150-4-0 which seems to have been withdrawn by him from his own account in the post office savings bank (paragraph 11). It is clear from his evidence that Rs. 7,000 which were received by Shri Shastri in three instalments were all required for election expenses. His omission to include these under 'receipts' clearly appears to be deliberate, for otherwise the receipts would have exceeded Rs. 12,000.

144. It seems Shri Shastri withdrew Rs. 4,000 on 19th November 1952, Rs. 2,000 on 26th December 1952 and Rs. 1,000 on 28th December 1952 for expenses in connection with the election and these amounts must have been spent by him for the purpose. This explains the suppression of the account books by the respondent 1. It is impossible that Shri Shastri would have been allowed to withdraw Rs. 2,000 on 26th December 1952 and again Rs. 1,000 on 28th December 1952 unless these amounts were actually required for expenses. We have no hesitation in holding that respondent 1 spent Rs. 7,000 through Shri Shastri. In view of this evidence we have no hesitation in holding that the expenses incurred by respondent

1 in the 'conduct and management of his election' far exceeded Rs. 12,000. Section 77 of the Representation of the People Act provides for the maximum scale of election expenses and that section has to be read with rule 117 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, which in its turn refers to the maxima specified in Schedule V. The reason for the rule limiting election expenses has been very clearly and very succinctly stated by the learned Members of the Vellore Tribunal in *Munisami Goundar V. S. Khader Sheriff and others* (Gazette of India Extraordinary, dated March 26, 1953 p. 913) as follows:—

"We have, further, no doubt that this must be in pursuance of a salutary and fundamental principle of democracy, that the suffrage of the voters must be obtained on the worth of the candidates, on the merits of their programme, and not with the unfair aid of mere wealth."

In view of the evidence discussed above we hold the respondent 1 guilty of the major corrupt practice of contravening the rule laying down the maximum election expenses permissible in the case of a candidate, specified in Section 123(7) of the Representation of the People Act, 1951.

145. We now come to the last and the second important point in this case, and it is, whether, in view of our finding that respondent 1 is guilty of corrupt practice, respondent 2 can be declared elected. Section 101 of the Representation of the People Act, 1951, runs as follows:—

"101. Grounds for which a candidate other than the returned candidate may be declared to have been elected:—

If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Tribunal is of opinion—

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt or illegal practices the petitioner or such other candidate would have obtained a majority of the valid votes,

the Tribunal shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected."

Thus the petitioner, who asks for a declaration that not simply the election of the returned candidate is void but that another candidate has been duly elected, the Tribunal can only grant that relief if it is opinion (1) that in fact, the petitioner or such other candidate received a majority of the valid votes; or (2) that but for the votes obtained by the returned candidate by corrupt or illegal practices the petitioner or such other candidate would have obtained a majority of the valid votes. The returned candidate, in this case, obtained 25308 votes while the respondent 2 obtained 6440 votes. The case does not, therefore, fall under (1) because the respondent 2 in fact has not received the majority of the valid votes.

146. The learned counsel for the petitioner argued that because the respondent 1 was guilty of corrupt practices the votes obtained by him should be regarded as thrown away and the respondent 2 should be held, therefore, to have obtained a majority of the valid votes, as none of the votes obtained by him can be regarded as invalid since there has been no pleading of recrimination. The learned counsel also drew our attention to *Raja Harpal Singh Vs. Pandit Krishna Kant Malviya* (Case No. 53 in *Hammond's Election Cases*, page 419), where there were only two duly nominated candidates contesting the election and the election of one of them was found to be void and the other was therefore declared duly elected. The declaration seems to have automatically followed the setting aside of the election of the returned candidate. It has been pointed out in the Note below the decision that "the law has since been altered". We have not before us the Rules which were in existence in 1921, but it clearly appears to us from the language of section 101 of the Representation of the People Act that in order to secure the declaration that another candidate has been duly elected, the petitioner must prove that the number of votes obtained by the returned candidate by corrupt or illegal practices was so large that if those votes were deducted from the votes obtained by him, the number of votes left to him would be less than the valid votes obtained by the other candidate in respect of whom the declaration that he is a duly elected candidate is sought.

147. We have held the respondent 1 guilty of employing persons as paid canvassers and also of having exceeded the limit to which Rules restrict election expenses. It is not possible to say how many votes respondent 1 obtained as a result of the expenditure in excess of the limit, or on account of the employment of paid canvassers. The respondent 1 was backed by the Congress Party which was in power and canvassing by the leaders of the Party must have had material effect on the electorate. But merely on this data, it is impossible to hold that but for the expenditure exceeding the limit laid down by Rules framed under the law and the canvassing by the 11 so-called messengers the number of votes secured by the respondent 1 would have been less than the number secured by the respondent 2.

148. That where the returned candidate is unseated another candidate does not automatically get the seat but can only get it on proving that but for the corrupt or illegal practices proved in the case he would have secured a majority of lawful votes, has been held in a number of cases.

1. R. B. G. K. Chitalay and another V. Nandevrao and another (Ahmadnagar) (Jagatnarayan's reports of Indian Election Petitions, Vol. III-1926-1928) (1929 Edn. 180);
2. Babu Chhail Behari Lal Kapoor V. Thakur Moti Singh (Jagat Narain's Reports of Indian Election Petitions—Vol. II, 1923-25) (1930 Edn. 17).
3. Muhammad Fazal Khan V. Chaudhri Ali Akbar [Jagat Narain's Reports of Indian Election Petitions (Vol. II) 1923-1925] (1930 Edn. 103 at p. 106);
4. Kr. Mohammad Abdul Jalil Khan V. K. B. Mohammad Rehmat Khan and another (Bulandshar-East) (Dobia's Indian Election Cases 1935 to 1950, Vol. II 1951 Edn. p. 180 at p. 189);
5. M. Mohammad Ismail V. Haji Akhtar Hussain (Moradabad District-South East) (Dobia's Indian Election Cases 1935 to 1950, Vol. I, 1950 Edn. p. 35 at p. 45); and
6. Madanpal V. Rajdeo Upadhyaya and others (*Extraordinary Gazette of India* dated May 16, 1953, p. 1585 to 1600) decided by the Election Tribunal Gorakhpur.

In Rajdeo Upadhyaya's case, the learned Judges of the Tribunal observed:—

"We have shown above that the contention of the respondent 1 (that the petitioner should not be given the seat as the corrupt practices committed by the respondent 1, if at all were of trivial nature and limited character and the respondent 1 took all reasonable means for preventing the commission of such practices) mentioned above is not correct. But we feel that the petitioner should not be given the declaration that he has been duly elected because it has not been proved that but for the votes obtained by the returned candidate by corrupt or illegal practices the petitioner would have obtained a majority of valid votes, *Vide* S. 101 of the Representation of the People Act, 1951. As such, we hold that the petitioner should not be declared elected in the present case and we decide the issue accordingly.

149. In view of this law, it appears to us that it is not possible for us to declare respondent 2 as a duly elected candidate. Thus, while setting aside the election of the respondent 1 we cannot declare the respondent 2 elected to the seat to which he had been declared elected by the returning officer at the last bye-election.

150. We hold that the exclusion of the expenses incurred by the Mahakoshal Congress Committee or the District Congress Committees of Balaghat and other districts, or by the State Ministers and other prominent members of the Congress organization and by persons who sent their motor cars to be used in the election campaign, was deliberate, and the return of election expenses submitted by the respondent 1 was, therefore, a false return. The respondent 1 is, therefore, guilty of the minor corrupt practice of submitting a false return under section 124(4) of the Representation of the People Act, 1951. But this has not materially affected the election of the respondent 1. We have held the respondent 1 guilty of corrupt practices, (1) of employing persons (paid canvassers) in contravention of the Rules and (2) of incurring or authorising expenses in excess of the maximum permitted by the Rules, both falling under section 123(7) of the Representation of the People Act, 1951. These corrupt practices were committed by the respondent 1 himself and under section 100(2)(b) the election of the respondent 1 must,

therefore, be set aside. We accordingly declare void the election of the respondent 1 and set aside his election. We, however, cannot declare respondent 2 elected and we, therefore, reject the petitioner's prayer relating to this relief.

151. The petitioner challenged the election on several grounds many of which he failed to substantiate. The evidence adduced by him to prove the corrupt practice of obtaining or attempting to obtain the assistance of persons in the service of the State Government (Komalsingh, Patel and Istekharali) for furtherance of the prospects of respondent 1's election does not appear to us to be true. An attempt to prove this corrupt practice by such evidence must be deprecated in no undertain terms. He did not care to examine witnesses (particularly respondent No. 2) whose evidence would have thrown considerable light on the facts of the case. We do not think, under the circumstances, that we should allow the petitioner his full costs. As, however, the petitioner has done the public service of vindicating the right of the electorate to free and fair election we allow him half his costs though on many of the issues our findings have been against him. We direct the respondent 1 to bear his own costs.

(Sd.) N. H. MUJUMDAR,
Chairman of the Tribunal.
(Sd.) S. C. RAI,

NAGPUR;
April, 26th 1954.

Member of the Tribunal.
(Sd.) A. RAZAK,
Member of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, NAGPUR

PRESENT:

1. Shri N. H. Mujumdar, B.Sc., LL.B.—*Chairman*.
2. Shri S. C. Rai, B.A., LL.B.—*Member*.
3. Shri Abdul Razak, Advocate—*Member*.

ELECTION PETITION No. 1 OF 1953

1. Shri Amirchand, son of Phadalilal Jain, age 33 years, resident of Ojha Ward, Mandla, tahsil and district Mandla, Madhya Pradesh—*Petitioner*.

Versus

1. Shri Surendra Lal Jha, son of Pandit Ballabhaji Jha, age about 40 years, resident of Ojha Ward, Mandla, tahsil and district Mandla.
2. Shri Dwarka Prasad Mishra, son of Pandit Ajodhya Prasad Mishra, age about 50 years, resident of Dharampeth Extension, Nagpur, Madhya Pradesh.
3. Shri Chetram (Chaitram) Choudhari, son of Ghanashyam Prasad Choudhari, age about 46 years, resident of Maharajpur, Mandla, tahsil and district Mandla, Madhya Pradesh.
4. Shri Devendralal, son of Mahendralal Choudhari, age about 25 years, resident of Maharajpur, Mandla, tahsil and district Mandla, Madhya Pradesh.
5. Shri Shyamlal Wikey, son of Indu Wikey, age 40 years, resident of village Sarra, tahsil and district Mandla, Madhya Pradesh.
6. Shri Gaya Prasad, son of Dharamlal Yadava, age about 34 years, resident of Amla Ward, Mandla, tahsil and district Mandla, Madhya Pradesh—*Respondents*.
 1. Shri B. R. Mandlekar Advocate for the Petitioner.
 2. Shri R. M. Hazarnavis Advocate and Shri U. D. Pathak Advocate for the Respondent No. 1.
 3. Shri S. P. Pathak Advocate for the respondent No. 3.

ORDER OF THE TRIBUNAL

1. In view of the order passed today, we declare the respondent 1 Shri Surendra Lal Jha guilty of the minor corrupt practice of making a return of election expenses which is false in material particulars [section 124(4)] of the Representation of the People Act, 1951, and of major corrupt practices under section 123(7) of the Representation of the People Act, 1951, of employment of persons in contravention of rule 118 and of incurring or authorising expenses in contravention of rule 117

(read with Schedule V) and declare his election void. We reject the prayer of the petitioner for a declaration that respondent 2 is the duly elected candidate from the Nainpur-Mohagaon Constituency. We direct the respondent 1 to pay half the costs of the petitioner and bear his own costs. It is needless for us to say that our finding regarding corrupt and illegal practices shall result in disqualifying respondent 1 under sections 140 and 141 of the Representation of the People Act, 1951. We do not recommend exemption of respondent 1 from disqualifications which he has incurred under sections 141 to 143. Counsel's fee Rs. 1,000.

(Sd.) N. H. MUJUMDAR,

Chairman of the Tribunal.

(Sd.) S. C. RAI,

Member of the Tribunal.

(Sd.) A. RAZAK,

Member of the Tribunal.

NAGPUR;
April 26th, 1954.

SCHEDULE OF COSTS

Petitioner	Amount	Respondent No. 1	Amount
1. Stamp for Election Petition	0 0 0	Stamp for Power	2 0 0
2. Publication charges of Election petition.	413 12 0	Service of process	29 8 0
3. Stamp for Power	2 0 0	Subsistance for witnesses	767 8 0
4. Stamp for Exhibits	0 0 0		
5. Pleader's Fees	1,000 0 0	Pleader's fees	1,000 0 0
6. Service of process	109 0 0	Misc. applications and affidavits.	12 0 0
7. Subsistance for Witnesses	2,309 10 0		
8 Misc. applications and affidavits	17 0 0		
9 Misc. expenses,—such as Telegrams, Commission fees.	80 10 0		
TOTAL	3,932 0 0		1,811 0 0
On Petitioner	1,966 0 0		
On Respondent No. 1	1,966 0 0	plus his own costs Rs. 1,811.	

(Sd.) N. H. MUJUMDAR, *Chairman,*
Election Tribunal. Nagpur

[No. 82/3/53/9961.]

By Order,

K. S. RAJAGOPALAN, Asstt. Secy.

